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LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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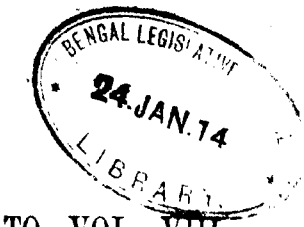

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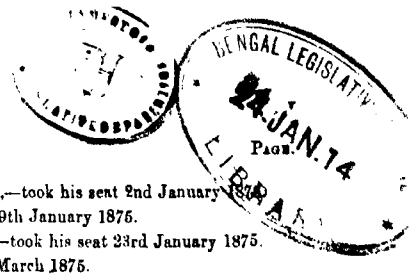
" Rivers Thompson,—took his seat 11th April 1874.
" Baboo Juggadanund Mookerjee,—took his seat 11th April 1874.
" F. G. Eldridge,—took his seat 11th April 1874.



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BENGAL LEGISLATIVE COUNCIL
24 JAN 74
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PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 28th March 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
and
The Hon'ble Baboo Doorga Churn Law.

NEW MEMBERS.

The Hon'ble Mr. Schalch, the Hon'ble Mr. Hogg, and the Hon'ble Baboo Doorga Churn Law, took their seats.

CALCUTTA MARKETS ACT AMENDMENT.

The Hon'ble Mr. Schalch moved for leave to introduce a Bill to amend Act VIII of 1871 (for the better regulation of markets in Calcutta, and to empower the Justices to establish Municipal Markets). He said, before proceeding to explain the provisions of this Bill, he would claim the attention of the Council while he gave a brief sketch of the circumstances which led to the introduction of that Act, and the proposed amendment of it now. When the present Municipality was created, more than eleven years ago, the attention of the executive was drawn almost immediately to the state of the markets scattered all over the town. The Health Officer of the town was requested to visit and report upon these, and after a time considerable improvements were made; the owners of the markets, as a general rule, being willing to co-operate with the Municipality. In one bazar, however, the Dhurrumtollah Bazar, which afforded supplies to nearly all the Europeans, and a great portion of the native population inhabiting the portion of the town south of Bow Bazar, the Municipality met with great obstruction. There was no desire shown on

the part of the proprietors at all to meet the wishes of the Municipality: only, so far as the law permitted, the most glaring defects of conservancy were removed. But even in carrying out those improvements, from the outset, great reluctance was shown on the part of the proprietors. Nothing would induce them to carry out measures for the comfort and convenience of the public beyond the point up to which they were obliged to do by law. In 1866 the Municipal Act was amended, and advantage was taken of it to introduce a clause by which the Municipality was empowered to widen and clear out the approaches to and roads in the bazars, and under the operation of that Act many improvements were carried out in the Dhurrumtollah Bazar, and it was to some extent rendered less crowded. However, that bazar still remained in a very unsatisfactory state, and it was still very crowded, ill-ventilated, and defective in its arrangements. The condition of the bazar was so considered by many of the rate-payers, and a meeting was at one time held to bring the matter to public notice. However, nothing came of that. But in the beginning of 1866, when MR. SCHALCH happened to be Chairman, there being a surplus of a lakh of rupees to the credit of the Municipality, he brought forward a resolution proposing that it should be allotted to the purchase of land for a site for the establishment of a Municipal Market. That proposal was accepted by the Justices, and subsequently the sanction of the Government was obtained for allotting one lakh for that purpose. He might mention, perhaps, that in making that proposition, his idea at the time was to purchase a piece of land that would suffice for the ordinary requirements of a Municipal Market; and if it should prove necessary to establish one, that at first the building should be on a more limited scale, in view that when the proprietors of the Dhurrumtollah Market saw there was a decided wish on the part of the Justices, if necessary, to establish a Municipal Market, they might be induced to make arrangements to ameliorate the condition of their own bazar; so that it was merely a desire on the part of the Justices to work in co-operation with the owners of the Dhurrumtollah Market for the general benefit of the public. However, shortly after that he left the Municipality, and his successor laid the matter before the Finance Committee. The Finance Committee was of opinion that the amount which had been allotted for the purchase of a site for a new market would not, under the circumstances, suffice; and it was proposed to the Justices by their Chairman, in accordance with the Resolution passed by the Finance Committee, that a site should be purchased and estimates should be made of the probable cost of establishing a Municipal Market. That Resolution came before the Justices at a meeting held on the 27th of April 1866; it was opposed by many of the Justices, and a Resolution was passed to the effect that the market project should be abandoned. The matter in question dropped, and nothing was done again until 1870, when the Chairman, in bringing forward matters connected with the Municipal Slaughter-house, suggested the expediency and advisability of establishing a Municipal Market. The project was then taken up and the Chairman suggested that, with a view to avoid the expense which would be incurred in purchasing a site, the

Wellington Square, which was then covered in as a reservoir for supplying water to the town, should be devoted to that purpose. That Resolution did not meet with acceptance, and a special market committee was then appointed, in view to consider the expediency and practicability of constructing a Municipal Market. That committee reported in January 1871. The report was in favor of establishing a Municipal Market by purchasing the Dhurrumtollah Market for the sum of six lakhs of rupees under the Land Acquistion Act so as to obtain a good and sufficient title; or in case the proprietors were not willing to part with it upon those terms, then the piece of land situated between a certain part of Jaun Bazar and Lindsay Street should be taken up as a suitable site. The Chairman of that time, he believed, supported the proposition to buy the Dhurrumtollah Market. However, on the matter coming before the Justices, they finally resolved that it was in their opinion advisable to establish a Municipal Market; that the Legislative authority should be moved to pass an Act empowering the Justices to establish one or more Municipal Markets, and to raise the necessary capital by the issue of municipal debentures or otherwise, on the security of the markets and of the land on which the markets might be constructed, as well as of the rents to be derived from the markets, and on the collateral security of the rates and taxes; and lastly, that in the event of the Government agreeing to authorize the Municipality by a legislative enactment to establish a market, and also to grant a loan to the Municipality for that purpose, the Chairman be authorized to do all acts necessary for acquiring the site, recommended by the special committee, lying between Jaun Bazar and Lindsay Street. On that Resolution being forwarded to Government Act VIII of 1871 was introduced, based very much upon the terms which were suggested by the Municipality. So far this was the history of the introduction of Act VIII of 1871. In accordance with that Act the sum of six lakhs of rupees was borrowed from the Government and appropriated to the purchase of land and the construction of the market. The present Chairman of the Municipality took a great interest in this undertaking, and through his exertions land had been purchased and a portion of the building which the Municipality designed to construct had been constructed, and the market was established and opened by the Chairman at the close of last year. Immediately upon the opening of the market it naturally entered into direct competition with the Dhurrumtollah Market, and there had been serious complications resulting thereupon. Suits had been brought against the Chairman personally by the proprietor of the market for alleged illegal acts and appropriation of the funds of the Municipality to purposes not contemplated by the Act. This led to the subject being again brought before the Justices, and on the 15th of last January the Justices appointed a special committee for the purposes of assisting and advising the Chairman on all matters connected with the Municipal Market. Subsequently, at a meeting held on the 20th January, they resolved that the question of arranging matters with the proprietors of the Dhurrumtollah Market, with a view to prevent future disputes, be referred to the special committee for consideration and report; and that it should be an instruction to the committee that the idea of giving up

the new market should not be discussed or in any way entertained. Guided by those instructions, the special committee held several meetings, and submitted their report. They suggested that the Justices should obtain legislative sanction for expending money for all purposes necessary to secure the establishment and maintenance of the Municipal Market in competition with the Dhurrumtollah Market, and they further suggested that, in preference to that, a compromise should be effected by buying up that bazar. The Justices in meeting on the 10th February considered this report. They resolved to purchase, on certain conditions, the Dhurrumtollah Market for a sum of seven lakhs, it being understood that the Lieutenant-Governor would propose to the Legislative Council any legislation necessary to enable the proposal to be carried out. On receipt of these proceedings from the Justices the present Bill was drafted and was now before the Council.

With regard to that Bill MR. SCHALCH would make a few observations. The establishment of a market, or rather the construction of it, had entailed considerable expense upon the Municipality; and it was, he thought, for the Justices to consider how that expenditure was to be met. It was not, he thought, for the Council to dictate to them the way they should follow, or that they should follow any particular course, but to place them in a position whereby, by removing any defects of the existing law, the Council could give them perfect freedom of conduct, so as to enable them to adopt any course they might think advisable. The Municipality was certainly not represented by election, but it certainly was represented by selection, and by the nominations made to the office of Justice of the Peace almost all classes of the community were represented in the Corporation. It was, he thought, for them to determine what course they would follow. By their last Resolution they proposed to purchase the Dhurrumtollah Market on receiving the necessary sanction from Government. But he should mention that since that Resolution was passed there had been a very strong remonstrance submitted by very many of the inhabitants of the town, and the matter was to be reconsidered in the coming week.

There now seemed to be three courses open to the Justices. One was to close the market altogether. That seemed to be certainly not advisable, because a large sum of money had been expended upon the market. The object, if it could be carried out, was undoubtedly a good and a laudable one, and by closing the market, a certain burden would be thrown upon the rate-payers of the town, and as the Act at present stood, it was a question whether, having once opened a market, they could close it.

Secondly, it was open to the Justices to carry out the scheme—having constructed and established the market, to maintain it. Of course, for establishing and maintaining the market certain funds would be necessary, and hitherto it had been supposed that that expenditure could be met from the Municipal Fund. That question was raised, and an opinion had been given by eminent lawyers, which, of course, he would not attempt to controvert, that under the law the Justices could not expend the municipal funds for that purpose; and that, under Act VIII of 1871, the Justices were authorized to construct markets, but

The Hon'ble Mr. Schalch

not to expend any money for maintaining them. This certainly seemed to him to be rather a restrictive construction of the law; because if we looked to the debates which ensued when that Act was introduced, it certainly was the general opinion that not only were the funds to be applied towards the construction of a market, but that they would probably be necessary towards the maintenance of it: because it was even feared, not only that the Justices would have to maintain a bazar by means of the ordinary necessary expenses, but that it might be necessary for them to apply for powers to establish farms and incur other expenses altogether outside the usual establishment and expenses of a market; and that was very strongly objected to. However that might be, an opinion to that effect having been given, it was thought necessary that it should now be distinctly stated that the Justices would have the power, not only of constructing and building, but of maintaining and establishing a market. We all knew that in this place perhaps more than anywhere else it was not sufficient merely to open a building for the purposes of a market, but you must establish it, and make arrangements for the necessary supplies being forthcoming, and for that purpose a certain amount of expenditure would have to be incurred.

Well, then, there was a third course open to the Justices to adopt, which was to do away with all competition by purchasing the Dhurrumtollah Market; but even in that case, if they purchased the rival bazar, they must still have a certain power of expenditure for the purpose of maintaining their own market. He did not propose to ask the Council to decide which of these three courses it would be advisable to adopt. The Justices represented all classes of the community, and it was a matter entirely for them to determine what their course of action would be. All that he thought the Council could do would be to clear the way for them, so that they might not find that they were debarred by the law from following any one particular course.

With this view it was proposed to introduce a Bill to amend the existing Act. It was not the time now to enter into the details of the Bill, but he would state roughly what its chief provisions were. First, he would say, that the existing rights of all present bazar proprietors were to be maintained; that for the future the Justices would retain the right they now possessed of licensing bazars, but would be allowed to exercise their discretion as to whether or not they should grant such licenses. Secondly, the Bill proposed to give the Justices power to take up land for the construction of municipal markets by purchase, lease, or otherwise; to purchase or take on lease any lands now used as a market, and to appropriate lands now belonging to them, and to set out the whole or any part thereof for the purposes of such markets. The next chief provision in the Bill was that it should be left for the Justices, from the Municipal Fund, out of the money to be borrowed under the Act, and out of the money derived from the rents, to expend such sums as they might think necessary for the construction, maintenance, and keeping of such market in repair. The Bill further gave the Justices power to acquire any land for these purposes.

These were the main features of the Bill. When the Bill went into Committee its details would be carefully considered, and, no doubt, due

consideration would be given to any observations that might now be made by any Hon'ble Member. He would ask permission to move that the Bill be introduced.

The Hon'ble Baboo Doorga Churn Law said he objected to the Bill. In the first place the financial aspect of the scheme seemed most unsatisfactory, and he thought it would be a burden to the town to allow the Municipality to enter into this new scheme. He had made calculations as to the prospective results of buying the old rival bazar, and the result seemed to him to show a very heavy loss to be yearly incurred by the Municipality, for how long it was impossible to say; and if the Bill was passed he thought it would be a great injustice to the rate-payers of the town. With these remarks he regretted he could not support the Bill.

His Honor the President said the Council would understand that, as his time was now very fully occupied, it had not been possible for him to give full attention to the details of the Bill. For the details, therefore, he could not hold himself responsible, but for the general principles of the Bill, he might say that he did hold himself responsible jointly with the Hon'ble Member who introduced it. He was very sorry indeed to learn that a gentleman so well qualified to judge as his hon'ble friend, Baboo Doorga Churn Law, held a contrary opinion, but he trusted that when the matter was threshed out in Committee, perhaps these differences might be in some degree reconciled.

He would state briefly the history of the Bill so far as he was concerned in it as the representative of the Government. The Hon'ble Member in charge of the Bill had very lucidly explained the whole matter from a period far previous to His Honor's administration. But as regards the immediate position of the matter he would say a few words. Now, the first occasion in respect of which he consented to take part in placing a Bill of this kind before the Bengal Council was in regard simply to the question whether the Justices of the Peace for the Town of Calcutta, the Municipal Corporation, had or had not power to expend their own moneys in the establishment and maintenance of a market. The Members of the Council were probably aware that at a meeting of the Justices there was, he might say, sprung upon them as a surprise a legal opinion, or rather a part of a legal opinion, the effect of which was to induce the Justices of the Peace to suppose that the proceedings of their Chairman had been illegal, inasmuch as money had been expended on the establishment of a new market. Now, he must say that that opinion took him entirely by surprise. His Honor was a party to the last Market Act which was introduced into this Council, and certainly his impression was that the object and intention of the Act was that the Justices should have the power to build, establish, and maintain a market. It seemed to him to be an absurdity that power should be given to the Justices to build a market, and that no power should be given to them to expend money legitimately necessary for the establishing and maintaining of that market. It seemed to him that the opinion put before the Justices, if it was correct—and in regard to that he did not now say a word—altogether stultified the Act of this Council in passing a Bill for the establishment of municipal markets. Because, if the Justices should build

a market, and before any income was received, could not expend any money upon the establishment and maintenance of the market, the whole Act of necessity would fall to the ground. He therefore at once said that, in his opinion, if there was any reasonable doubt as to the construction of the law, it was right that the doubt should be cleared up, and power given to the Justices at their discretion to expend money for establishing the market in such ways as might seem to them to be right. He was very far from saying that it was desirable that the Justices should establish farms, and incur other expenditure outside the ordinary and simple duty of establishing and maintaining a market in the ordinary way. But so far he thought it was right that so much power should be given to the Justices, and he hoped the Council would consent to that power being given to the Justices. That power was given by Section 8 of the Bill now before the Council; but he thought it necessary to guard himself against the supposition that either he or the Government of Bengal was in any degree responsible for the exact wording of the Bill, because he observed that there were some words in Section 8 to which he was not altogether prepared to subscribe. His view was that it was fair that from borrowed capital the Justices should build the Municipal Market and do all that was necessary for its establishment, in the same manner as out of capital railways and other great works were constructed. But he thought that for its future establishment and maintenance, and for doing all those auxiliary things which were necessary to carry on the market, recourse should not be had to borrowed money, but this should be done from the municipal income. If he were a member of the Select Committee on this Bill he should be very much inclined to call in question the words in Section 8, "out of the moneys borrowed under the provisions of this Act." His view was that from the money borrowed the market should be built and completed, and that money borrowed should not be applicable to the establishment and maintenance of the market after it had once been given over to the Justices in a complete state. His view was that so much should be done from current income, from the rents and collections of the market, and the general revenues of the Municipality. With that proviso he thought it was proper that the Justices should be able to establish and maintain any municipal markets which they had built.

Well, then, we came to another part of the Bill, which was that part which gave the Justices power to borrow another seven lakhs with a view to apply it to the establishment of markets. The Hon'ble Member in charge of the Bill had explained that the object of that simply was to enable the Justices to buy up the market known as the Dhurrumtollah Market. His Honor had heard with great regret that his hon'ble friend, Baboo Doorga Churn Law, thought that the proposed speculation would be an unprofitable one. His Honor was himself inclined to suppose that the speculation would be a profitable one to the Justices; he was not inclined to take part in any action of that kind which would result in serious loss, but it seemed to him that it would be profitable to the Justices in two ways—first, that a very valuable property would be acquired by them, which property, if it were to be sold by auction, would bring in a large price, or if it were let out, would yield large rents, and a large income would thus be acquired; and

secondly, the Justices would thus buy off competition. As a rule, he was pre pared to admit that individual competition was a very good thing; but on th other hand, when we had opened out a public market, which would be conducte in the interests of the community, he did not think it was undesirable tha competition should be bought off. It seemed to him that it would be ver injurious both to the Municipality and the proprietors of the old market if the entered into a protracted and active competition with each other, and he believe that the public would benefit both directly by a good investment and indirectly b the absence of competition and injurious rivalry. Well, then, that being so he had only to say that the question whether the bargain was a good or a bad one was not for this Council but for the Justices to decide. He trusted tha there was that amount of wisdom in the Corporation, comprising as it did many very competent persons, to enable them to decide whether the bargain was a good bargain or a bad one. In respect to that he must confess that he was no in a position to form a competent opinion. All that we proposed to do in respec of this Bill was that power should be given to the Justices to borrow a certain sum of money, and with that sum of money to make what they might conside a good and prudent bargain for the purchase of a large market in the town If they considered that bargain to be an imprudent one, it would be for them to reject it, and he had no doubt that even if the Council should be pleased t accept this Bill, in his hon'ble friend Baboo Doorga Churn Law, in his capacity of a member of the Corporation, a safe guardian of the interests of the Justice and the public would be found, and that no bad or imprudent bargain woul be completed. If the Council had sufficient confidence in the Justices, an if they believed that the Justices would not be likely to make a foolish or imprudent bargain, why then, His Honor believed this Bill might safely be passed. The Council would have full assurance that the Justices would ac according to their best discretion, and if they made a foolish or a bad bargain the Government would then do its best to control the action of th Justices.

The other part of the Bill was a sort of condonation for past acts. Now, Hi Honor wished to say at once that this Bill would in no degree interfere betwee the Justices and their Chairman. It was for the Justices to settle what the Chair man did with their authority, what they approved of and what they did not; bu as between private individuals on one side and the Justices and their Chairma on the other, he thought that it was right that the Council should legalise th Acts which the Government and others had supposed to be legal, namely, tha the Justices might expend money for the due establishment and maintenanc of the markets which they might build. Beyond that we did not ask th Council to go. But so far he thought they should go. The opportunity wa taken to enable the Justices to regulate the municipal markets by bye-laws and he felt sure that the Council would think that was a reasonable and prope power to give the Justices. That was a power given in other Acts in regar to all such matters to public bodies, and there was nothing unreasonabl about it.

His Honor the President

Under all the circumstances he trusted that the Council would think that this Bill was not, *primâ facie*, an unreasonable Bill, and that the objection his hon'ble friend had made in regard to the imprudence of the bargain was not one which would be decided by this Bill, and could be reconsidered by the Justices, and HIS HONOR hoped therefore that the Council would not object to the introduction of the Bill and to its being referred to a Select Committee, as was about to be proposed.

The motion was then agreed to.

The HON'BLE MR. SCHALCH applied to the President to suspend the rules for the conduct of business in view to his proceeding with the Bill to its next stage. Publication had been given to the Bill, and the subsequent motions were merely of a formal nature.

HIS HONOR THE PRESIDENT said it was very undesirable that this Bill should be unduly hurried. But since it had been for some days in the hands of the Council, and as they knew what the Bill was, and, as had been suggested, the proposal to forward it one degree was a mere matter of form, he thought he was fully justified in suspending the rules, and he would therefore give permission to the Hon'ble Member in charge of the Bill to proceed with it.

The HON'BLE MR. SCHALCH moved that the Bill be read in Council.

The HON'BLE MOULVIE ABDOOL LUTEEF said that, if it were considered advisable to continue the new Municipal Market which had already been established, as he believed it was, he thought that the Justices should have the extended powers proposed to be given to them by this Bill. The only point to which he wished to draw the attention of the Council was the provision in Section 8, which would make it lawful for the Justices to expend such sums of money out of the municipal funds as they might think necessary for the purposes of the Municipal Market. He admitted that some such provision was required to strengthen the hands of the Justices whenever such a course seemed reasonable and proper. But at the same time he thought that some reasonable limit should be placed upon the amount to be expended for the purposes of the Municipal Market out of the general municipal funds. The attention of the Select Committee should therefore, in his opinion, be directed to that point.

The motion was then agreed to.

The HON'BLE MR. SCHALCH moved that the Bill be referred to a Select Committee. He was in hopes that they should have the assistance of the learned Advocate-General in the Committee, but the Advocate-General had assured Mr. Schalch that his time was at present fully occupied; and although he was most willing to advise the Committee upon any matters connected with the Bill, he regretted that he could not sit on the Committee. MR. SCHALCH would therefore move that the Committee be composed of the following members, namely, Mr. Hogg, Moulvie Abdool Luteef, Baboo Doorga Churn Law, and the Mover, with instructions to report in ten days.

The motion was agreed to.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR THE PRESIDENT said he was not aware that there was any other pressing business before the Council, and unless the Council should be specially

summoned in the meantime, it would not be necessary that they should meet before the expiration of another fortnight, at the end of which time he hoped that the report of the Select Committee on the Market Bill would be laid before them; and therefore, for the present, the Council would be adjourned for a fortnight. In doing so, he might say that this was perhaps the last occasion on which he should have the honor and the dignity of presiding at the meetings of the Council. And he must take occasion, in taking leave of the Hon'ble Members of the Council, to thank them, which he did most heartily and sincerely, for the assistance which they had rendered him during his presidency. He would also say that he would retain to the last days that might be spared to him a pleasant recollection of what he might call the happy hours he had spent in this Council. He might say that, during the period in which he had the honor to preside, it had fortunately happened that the harmony of this Council had never been disturbed; that understanding and respecting one another, they had exercised their respective functions in a manner which, at all events, he hoped had not done harm, and which he might venture to say had done some good. He was sure that any good which had been done was due to the Hon'ble Members who now sat, and who had sat before them, in this Council. He could only, therefore, thank them very heartily indeed for their services, and he trusted that under his successors in future days they would continue their labors and follow the course which they had so honorably and so usefully followed for years past.

The Council was adjourned to Saturday, the 11th April.

Saturday, the 11th April 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble A. R. Thompson,
The Hon'ble S. S. Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble Baboo Juggadanund Mookerjee,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble F. G. Eldridge.

NEW MEMBERS.

The Hon'ble Mr. Rivers Thompson, the Hon'ble Baboo Juggadanund Mookerjee, and the Hon'ble Mr. Eldridge took their seats.

CALCUTTA MARKETS ACT AMENDMENT BILL.

His Honor the President said he wished to explain to the Council that, owing to the unavoidable absence of their hon'ble colleague, Mr. Schalch, it was

His Honor the President

necessary that another hon'ble colleague, Mr. Stuart Hogg, should take charge of this Bill, namely, the Bill to amend Act VIII of 1871, the Calcutta Markets Act. He had therefore to ask that Mr. Hogg would be good enough to take charge of the Bill on this occasion, and to proceed with the business.

The HON'BLE MR. HOGG moved that the report of the Select Committee on the Bill to amend Act VIII of 1871 of the Bengal Council, "The Calcutta Markets Act, 1871," be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. HOGG also moved that the clauses of the Bill be taken into consideration in the form recommended by the Select Committee.

The motion was agreed to.

The HON'BLE MR. HOGG moved that in Section 1, in the first clause, after the word "mean" the words "the Corporation of" be inserted. He said this was merely a verbal amendment, as he thought it would be wise, in defining the word "Justices," that we should adhere to the definition of the term as given in Act VI of 1863, which was the Act under which the Corporation of the Town of Calcutta was constituted.

The motion was agreed to.

The HON'BLE MR. HOGG said he had to propose a slight alteration in the second clause of Section 1. As the Bill now stood, "market" meant a market carried on under the control of the Justices of the Peace for the Town of Calcutta. In the amendment he had given notice of, he had suggested that the words "carried on under the control" should be altered to "the rent of which is paid by, or which is the property." But he would now ask permission to alter that slightly as follows:—"vested in or the property of the Justices." The clause would then run—"'market' means a market vested in or the property of the Justices, &c." The reason for this slight alteration was that in Sections 5 and 6 it was proposed to give the Justices power to sell the markets within the meaning of the word "market" as defined in this Act. We could hardly give the Justices power to sell a market which was rented by the Justices, and not their property. Therefore we proposed to confine the meaning of the word "market" to markets vested in or the property of the Justices.

The motion was agreed to.

The HON'BLE MR. HOGG said Section 2 of the Bill before the Council dealt with the proposal to repeal some sections of the previous Act, Act VIII of 1871. In accordance with the request of the Justices of the Peace, as submitted to the Council in their report, which was lately circulated among the members, he would suggest that the last three clauses of Section 2 be omitted, as the Justices were of opinion that it was not wise to repeal Sections 6, 7, 8, and 9 of Act VIII of 1871. The sections were really obsolete. However, as the Justices wished it, he did not think there could be any harm in conceding the point; he therefore proposed that the last three clauses of Section 2 of the Bill be omitted. He would also propose that after the words "are hereby repealed" be inserted the words "In the preamble the words 'for the sale of meat, fish, fruit and vegetables.'"

The reason for this amendment was that the Select Committee had deemed it advisable not to define the word "market" at all, but merely to say it was a market vested in or the property of the Justices. The Bill was to be read as part of Act VIII of 1871. In the preamble of that Act it was stated that the object was to enable the Justices of the Peace to establish Municipal Markets for the sale of meat, fish, fruit, and vegetables, thereby assuming that a market was to be restricted to places for the sale of meat, fish, fruit, and vegetables. It was true that the preamble was no part of an Act. But if the point should arise, there might possibly be slight complications, owing to the preamble of Act VIII of 1871 being somewhat in opposition to the Bill now before the Council. He would, therefore, suggest that the words—"In the preamble the words 'for the sale of meat, fish, fruit, and vegetables'" be inserted after the words "are hereby repealed."

The HON'BLE THE ADVOCATE-GENERAL asked whether the Hon'ble Mover intended to give the Justices of the Peace power to erect, construct, and establish markets for the sale of other things besides meat, fish, fruit, and vegetables? The amendment was apparently a departure from the subject-matter of the remarks made on a former occasion. It seemed not only an unnecessary amendment of Act VIII of 1871, but would be giving very extensive powers without sufficient preliminary consideration.

The HON'BLE MR. HOGG said the Bill before the Council restricted the word "market" to property vested in, or the property of, the Justices. Act VIII of 1871 enabled the Justices to establish Municipal Markets for the sale of meat, fish, fruit, and vegetables. That was merely stated in the preamble. In the Act itself the powers of the Justices in regard to the establishment of markets were not restricted, except so far that they were not allowed to expend more than seven lakhs of rupees. The preamble being somewhat opposed to the body of the Act itself, it was proposed that those words be omitted. He need hardly say that, in this country especially, when markets were established for the sale of meat, fish, fruit, and vegetables, it was almost impossible to restrict them to the sale of that class of provisions only, as there would also be sold in them miscellaneous articles of all sorts, such as charcoal, wood, salt, fowls, game, &c.; in fact, articles of every description would gradually be exposed for sale. Therefore, although the Justices had no desire to extend their powers, they would not wish their powers so curtailed as to prevent persons from taking leases of shops for the purpose of exposing such other wares as they might deem necessary. MR. HOGG trusted, therefore, that the learned Advocate-General would not press his objection.

The HON'BLE THE ADVOCATE-GENERAL observed that the explanation was perfectly satisfactory.

The motion was agreed to.

The HON'BLE MR. HOGG moved that in Section 3, at the end, the following words be added:—"Provided that before any application for such license shall be considered by the Justices at a meeting, the Chairman of the Justices shall cause the place, in respect of which application has been made, to be inspected

by not less than three Justices, whose report shall be laid before the Justices at a meeting." He said this amendment was based entirely upon the suggestion sent up by the Justices, who appeared to be desirous that the executive authority, the Chairman of the Justices, should not pass orders in matters connected with the granting of licenses without the application for licenses being duly considered by the Justices in meeting. They were also desirous that three Justices, with the Chairman, should inspect the place, and submit a report in writing to the Justices in meeting; he therefore, in accordance with the recommendation of the Justices, proposed the amendment which he had read out in Section 3.

The motion was agreed to.

The HON'BLE MR. HOGG moved to omit clause (*d*) of Section 4, and to substitute for it the following:—"For the establishment and publication of a price-current, and for prescribing the mode of sale of articles, whether by measure, weight, tale, or piece." There seemed to be a want of lucidity in the wording of the clause as it now stood.

The motion was agreed to.

The HON'BLE MR. HOGG said at the suggestion of the Justices of the Peace, it was proposed that in Section 9 the words "Special General" be inserted after the words "for the Justices at a." The object of the amendment was that the Justices desired that all matters connected with the establishment of markets should be considered by the Justices at a full meeting. A Special General Meeting implied that not less than twenty-five Justices should be present, whereas, at an ordinary meeting only three Justices might be present. He therefore proposed the amendment.

The motion was agreed to.

The HON'BLE MR. HOGG said Section 11 of the amended Bill seemed rather ambiguous, in not defining distinctly the way prosecutions under this Act should be conducted. He, therefore, suggested to omit from the beginning of the Section to the word "thereof" in the fourth line, and to substitute the following words:—"Every prosecution in pursuance of this Act, or of any Act incorporated therewith, shall be instituted before a Justice of the Peace, and every fine or penalty imposed by any bye-laws made in pursuance of this Act, or of any Act incorporated therewith."

The motion was agreed to.

The HON'BLE MR. HOGG said Section 12 of the amended Bill enacted that this Act should be read with, and taken as part of, Bengal Acts VI of 1863 and VIII of 1871, and all the powers, privileges, and rights conferred on the Justices by virtue of, and for the purposes of, such last-mentioned Acts, should be deemed to be conferred on the Justices for the purposes of this Act, in so far as the same were applicable or necessary. In addition to those Acts there were a number of other Acts which dovetailed one into the other. He therefore suggested the following amendment:—In Section 12, in the second line, for "Acts" substitute "Act." In the third line, omit the word and figures "VIII of 1871" and substitute the words "all Bengal Acts incorporated therewith." In the sixth line, omit the words "last mentioned." By this

amendment the Bill would be read as part and parcel of all the Municipal Acts that governed the Municipality of the Town of Calcutta.

The motion was agreed to.

The last amendment, moved by the HON'BLE MR. HOGG, was to omit the word "municipal" in the second line of Section 13. He thought this was necessary as they had not referred to the market as a Municipal Market either in this Bill or in the previous Act.

The motion was agreed to.

The HON'BLE BABOO DOORGA CHURN LAW said he had the honor to move the following amendment: In Section 9, lines 11, 12, 13, and 14, omit the words "and for any other purpose or purposes which the Justices may deem necessary for establishing or carrying on the same or conducive thereto." The reason for his objection to this part of the section was fully explained in his note of dissent annexed to the report of the Select Committee, and all that he had to say was, that if this section were adopted by the Justices, and they shaped their course accordingly, the result would be most mischievous so far as the rate-payers were concerned; and, besides, in this section there was no limit to expenditure, so that if the Justices engaged in active competition, there might be no end of expense incurred. He did not mean to say that the Justices would spend money like water, but there was nothing in the Act to prevent them from doing so. For these reasons he objected to those words.

The HON'BLE MR. HOGG said he rose to oppose the proposal to omit the words "and for any other purpose or purposes which the Justices may deem necessary for establishing or carrying on the same or conducive thereto." He need hardly say that the Justices had in contemplation the purchase of the Dhurrumtollah Market. If that proposal was carried into effect, there would be no necessity whatsoever for the Justices to enter into active competition or to spend moneys in the way indicated by his hon'ble friend. However, the purchase of the market had not yet been completed, and he would submit that it was no part of the business of the Council to dictate to the Justices the way in which they should establish a Municipal Market, which they had erected with permission and under the authority of a legislative enactment. The Council was informed by the Mover of this Bill, the Hon'ble Mr. Schalch, that the idea was that this Bill should enable the Justices either to purchase the Dhurrumtollah Market, or to close the Municipal Market, or to carry on the market in any way they should think proper; and it was suggested that power should be given to enable the Justices to act as they, in their wisdom, might think best. He was therefore strongly opposed to the powers that were intended to be conferred on the Justices being restricted. At the same time he would state that there was no intention on the part of the Justices to spend money unnecessarily, or to waste the rate-payers' money in the manner in which his hon'ble friend seemed to fear. If the words were omitted, and if the Dhurrumtollah Market should not be purchased, the Justices would find themselves in a most embarrassing position, as they would be unable to sanction expenditure other than for the mere maintenance and repairs of the market,

and keeping up a necessary establishment. He need hardly say that to establish a market upon a firm footing with such a restriction would be absolutely impossible. On these grounds he opposed the amendment.

The motion was negatived.

HIS HONOR THE PRESIDENT said—"Although this Bill has not reached its final stage, I yet deem it my duty to take this opportunity of declaring my general concurrence in the main principles of a Bill which appears to have attracted some interest in the city of Calcutta. In order to satisfy myself as to the merits of the case, I have carefully inspected, in company with our hon'ble colleague, Mr. Hogg, and other municipal officers, both the new market and the old, or Dhurrumtollah Market. I have also read all, or nearly all, the objections which have been urged against the measure, including the papers which have just been printed, and one of which bears so recent a date as the 8th April.

"I will not trouble the Council by attempting to enter into the details of the discussion; but will merely suggest, for the consideration of the Council, the principal questions which present themselves to my mind, as affecting the root and substance of the measure which you are asked to sanction.

"The first question, then, in my opinion, is—

"Was the new market built by competent authority, and is it a good and suitable structure?

"I understand that it was constructed under the directions of those who, at the time, had competent authority, and I should be, *primâ facie*, disposed to sustain their action, unless there were strong reasons to the contrary. Then, I am quite sure that the structure is an excellent one, worthy of this great city and its Municipality, worthy also of any support or sanction which may be required from this legislature. If it fulfils its present promise, it will prove quite worth the outlay which has been expended upon it.

"The next question, to my mind, is—

"Does this market fulfil a real need?

"In reference to this, I have, among the papers relating to the Bill, read much about the usefulness of the private markets, and their sufficiency to meet all the requirements of the public. But, notwithstanding the fullest appreciation of all that private enterprise has accomplished, or may yet accomplish, in the matter, I fear that private enterprise will not do all that is needed. As an instance, take the Dhurrumtollah Market. That is a market belonging to a publicspirited and wealthy native gentleman. It has long existed. It has lately been improved in a very commendable manner. We may assume that on the whole it is as good a market-place as we are likely to obtain by private enterprise. And yet take it as it stands to-day. Can we examine it and say that it is all that a market-place ought to be at such a place as Calcutta? or that it at all approaches in excellence the market by which it is to be replaced, if the Council pass this Bill? Surely it is much too small, too low, too close, too confined, for the large purposes which it has to serve. And yet those purposes will probably become larger and larger as the business of the city grows and expands, and as the facilities of railway communication bring more and more the produce of distant places to our markets of Calcutta. I say,

therefore, that a new and a better market-place was, and is, among the urgent needs of this city.

"The third question would be—

"If the new market-place has been well made, and is really wanted, ought it to be maintained by the Municipality?

"In most parts of India, I believe, in nearly all the large cities of India, the maintenance of the central market-places is undertaken by some corporation or institution which represents the whole community. There the task is found to be beyond the power of any individual or number of individuals. It is at least as difficult in Calcutta as anywhere. The new market concerns an important section of the public. And whether the Municipality be technically a representative institution or not, it certainly does act on behalf of the public interest. Although the Municipality may have power in respect to the regulating of private markets, still the administration is one which demands the entire force of the Municipality as proprietor, as well as supervisor or inspector. And if the Municipality be able to do the work better than it can be done otherwise, then surely this Council may be asked to concede such authority by law as may be required for this arrangement.

"But then, if the new market be thus established by the Municipality, there arises this question,—Do justice and equity demand that compensation should be given to those pre-existing private rights, which would be injured or destroyed by the unavoidable action of the Municipality in the general interest?

"Surely to this there can be but one answer, namely, that, in some way or other, such compensation ought to be arranged. And this compensation is virtually afforded by those sections of the Bill which relate to the purchasing by the Municipality of the old market-place for a price within the limit of an amount which constitutes a fair, even a liberal, price, and which, as I understand, the proprietors are willing to accept.

"There still, however, remains the question whether the terms of this arrangement are entirely fair to the rate-payers; and whether it is right to add any amount, however small comparatively, to the municipal debt, on this account?

"The answer to these questions must mainly depend on the opinion we form as to the nature and value of the property which the Municipality would thus acquire. I should think that all who examine the situation of the old market-place, so convenient, so central, so accessible, will be convinced that such a property, by whomsoever held, whether by individuals or by a public body, cannot fail to be valuable, and worth such price as the Municipality may settle under the terms of the Bill if passed by this Council. In other words, I think the Council may be sure that the property proposed to be purchased is a good and sound one. I acknowledge that it is most desirable to avoid adding anything more than can possibly be helped to the already large debt of the Municipality. But I should hope that this particular property, if well managed (as it doubtless will be by the Justices and their Chairman), will yield income as a set-off against the interest on the purchase-money, and thus prevent any burden for interest being thrown on the general rate-payers. I will not exactly anticipate

His Honor the President

the uses to which the Justices may see fit to apply the old market-place, if it shall be purchased. One suggestion I will, however, venture to throw out for consideration, namely this, that if the new market-place be used for raw produce, the old market-place may be devoted to products of manufacture; to those varied and beautiful wares which are sent to Calcutta from so many parts of the East, which are so much admired by travellers and visitors from all nations, but which are, as yet, exposed for sale, not in open places of resort, but in narrow streets and inconvenient situations.

"For all these reasons I am prepared to support the Bill, and to recommend it for the approval of the legislature of Bengal. But, as I may be called away by duty to the northern parts of these provinces, I may be unable to be present at the passing of the Bill. If I should not be present, however, our hon'ble colleague, Mr. Schalch, will preside."

The Council was adjourned to Saturday, the 18th April.

Saturday, the 18th April 1874.

Present:

The HON'BLE V. H. SCHALCH, *presiding*,
The HON'BLE G. C. PAUL, *Acting Advocate-General*,
The HON'BLE H. L. DAMPIER,
The HON'BLE A. R. THOMPSON,
The HON'BLE S. S. HOGG,
The HON'BLE BABOO JUGGODANUND MOOKERJEE,
The HON'BLE BABOO DOORGA CHURN LAW,
and
The HON'BLE F. G. ELDRIDGE.

CALCUTTA MARKETS ACT.

The HON'BLE MR. HOGG said he rose merely to move a verbal amendment. The reason for it was this, that by Section 12 of the Bill as first drafted, the Act was to be called the "Calcutta Municipal Markets Amendment Act." The Council at the last meeting struck out the word "Municipal" in that section, leaving the designation of the Act the "Calcutta Markets Amendment Act." He proposed that the preamble should be made to fit in with the wording of what was now Section 13 of the Bill. He therefore took leave to move that the word "Municipal" in the 6th line of the preamble be left out.

The motion was agreed to.

The HON'BLE MR. HOGG said, as this Bill had now been before the Council for several weeks, and had been fully discussed, he would not detain the Council with any remarks on the Bill. He therefore moved that the Bill be passed.

The HON'BLE MR. ELDRIDGE said, before recording his vote in favor of the passing of this Bill, he desired to give some of the reasons which induced him to reconcile himself to a measure which had interested the public to an unusual extent, and called forth from influential quarters considerable opposition. The

question was simply one of expediency, when viewed from the stage at which it had reached. It would be useless to discuss the question of the advisability of having a Municipal Market, or whether the one in possession of the Justices was the best that could have been devised. His Honor the Lieutenant-Governor had at the last meeting of the Council urgued those points fully, and MR. ELDRIDGE had nothing to add to them. The market existed. Whether it was good, bad, or indifferent as a market or as a building was another question: the fact remained that it was there, and the question was, what should be done with it in the interests of the tax-payers? It had on several occasions been called "a white elephant," but to his mind the simile was an extremely incorrect one. He believed there was a great domand for white elephants; and if the Justices had one they would be able to dispose of it on the most advantageous terms! But to sell the new market would involve a very serious loss. It was either a market, or it was nothing. Was it good policy, then, to allow it to go to decay and ruin; to sink the considerable amount of money already expended, leaving the interest as a perpetual legacy to the tax-payers of Calcutta? Would it not be more expedient to endeavour to make it pay a fair percentage on the investment by the judicious expenditure of more money?

The Act passed by this Council in 1871 gave permission for the construction of a Municipal market, and gave the Justices, as they then believed, power to maintain it after it was built. It appeared now that some doubts existed as to the legal right of the Justices to carry on a market after its construction, and this Council was asked to supply what was apparently inadvertently omitted in the Market Act of 1871. To that, he confessed, he saw no objection. On the contrary, it appeared to him that this was the best, and would prove in the end the least expensive, means of overcoming the difficulties which had threatened the new market ever since it was opened. The Bill before the Council did not state how the money should be expended, or what course the Justices should pursue; and to his mind it would be manifestly improper to attempt to exert any such control. The Bill simply gave the Justices power to act, and left them to apply those powers as they thought best. As that body was composed of representatives from nearly every section of the community, and amongst its members there were several of the largest property-holders and tax-payers in Calcutta, it seemed to MR. ELDRIDGE that it was a power that might be safely left in their hands, and he knew not any number of persons on whom such confidence might be more worthily bestowed. Under these circumstances he thought it right to vote in favor of this Bill.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

The Hon'ble Mr. Eldridge

Saturday, the 19th December 1874.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble H. L. Dampier,
The Hon'ble Rivers Thompson,
The Hon'ble Stuart Hogg,
The Hon'ble T. W. Brookes,
The Hon'ble F. G. Eldridge,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Juggadanund Mookerjee.

SUBJECTS UNDER CONSIDERATION.

His Honor the President, in opening the proceedings, spoke as follows:—

"As the Council has now met after an adjournment of several months, and inasmuch as the pressing avocations of the late famine in Bengal and Behar prevented the course of legislation from being proceeded with in the usual manner, and as this interruption has more or less extended over a whole year, and the Council is now met after this long interval, I desire briefly to submit, for the consideration of Honorable Members, a statement of the current business which is actually before the Council, and also of the business which depends altogether on proposals in the immediate future.

I would begin by briefly adverting to a statement of the Bills pending, handed to me by our learned Secretary, Mr. Millett. The first Bill on this list is the Bill to provide for the due appropriation of certain educational and charitable endowments.

This was referred back to the Select Committee for further report in July 1872, and, after a reference to the Government of India, it was found that the Bill touched upon rather difficult and delicate matters, which related to other parts of India besides Bengal; and it was therefore determined to drop the measure. I may mention that, as the Bill still stands upon our list of current business, with the concurrence of Honorable Members, we propose to direct our Secretary to strike it off.

The next Bill on the list is the Bill to amend Act XI of 1849, Act XXI of 1856, and Act XXIII of 1860. These Acts, as Members of Council are aware, relate to Abkaree and Excise. The Bill was referred to a Select Committee, which presented its report on the 17th March 1873; but since that time some very important memorials have been addressed to Government, to the effect that the existing system does not apply a sufficient check to inordinate drinking among the native population of Bengal. These memorials have been referred to the Board of Revenue, which, in this instance, is represented by Mr. Alonzo Money, and we await his report. We are naturally anxious to have the opinion of so able and experienced an officer as Mr. Money; and I hope, as soon as his report shall have been received, to lay before the Council such a measure as may appear appropriate.

The next Bill on the list is the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. This Bill was referred to a Select Committee in November of last year, and I understand that their report will be submitted to the Council as soon as our honorable colleague Moulvie Abdool Luteef shall have returned from the short leave which he is now enjoying. I am sure the Council will understand that, before submitting this report to Honorable Members, we are anxious to have the advice of so distinguished and experienced a member of the Mahomedan community as our honorable colleague Moulvie Abdool Luteef.

The next matter on the list is the proposed amendment of the Jute Warehouse Act No. II of 1872. This Bill, as the Council will recollect, refers to the suburbs of Calcutta, and it imposes a variety of restrictions upon new warehouses that may be constructed in the future, with a view to the prevention of fire and of the destructive effects which must arise from such conflagrations.

Considering the extreme importance to a city like this, in which the jute trade is assuming such large dimensions, of preventing such destructive conflagrations, we are naturally jealous of any relaxation of the restrictions imposed by law. Still various gentlemen and firms connected with the trade have represented that these restrictions, in several respects, hamper their operations unduly, and may fairly be relaxed without prejudice to the public interests. One particular application is this. The law provides that jute must be stored in a covered place. Now, the merchants are, I think, right in saying that when jute is brought here, as it generally is, during the rainy season, it often comes damp, and cannot be properly dried unless exposed to the air and the sun. Therefore they desire that the necessity of having a covered roof be remitted.

That, I think, is a fair point for the consideration of the Council and of the many experienced members whose advice we have. Provided that the enclosure is carefully walled in, and that the walls are sufficiently high to prevent the chances of fire spreading, it seems but reasonable that the enclosure should be opened to the air and the sun.

Another matter is this. The law provides that the beams and rafters of the roofs shall be of iron. The merchants represent that this iron material is very expensive, and seriously affects the increment of their capital account, and that wooden rafters and beams will be sufficient. I am not sure that this relaxation can be allowed, but still it is a matter for the consideration of Honorable Members as to whether the wooden material is sufficiently strong and fire-proof for the purpose.

Another matter which is perhaps of great importance is this. The law lays down that no artificial light shall be used in these warehouses. The reasons will, of course, be obvious. Now, the merchants say that to prohibit the use of artificial light is really to prevent any work being done at night; and inasmuch as their operations are often of urgent importance, they desire that they shall be allowed to have lights which may enable them to work at night. It appears to me that this might be conceded, subject to the better knowledge of the Council. If the lamps in use should be very securely fastened and

The President.

closed, so that the emission of any flame from them would be impossible; if such lamps, not being already in use in that branch of the trade, could be devised, and if they were open to official inspection from time to time, it appears to me that this concession might be admitted. Well then, with a view to consider these several questions of detail, an amendment of Act No. II of 1872 will be submitted to your consideration.

The next Bill on the list is the Bill to provide for the summary realization of loans made by Government during the year 1873-74, in the course of the operations for famine relief. As is generally known, we had occasion during the relief operations to make very extensive advances of grain in the distressed tracts all over the country. We had also to make some advances in money. Furthermore, we had to induce the zemindars and proprietors in many instances to stand security for their tenantry.

We had also to induce numbers of ryots to contract together upon joint personal security for the realization of those advances.

The total amount of such advances was very considerable,—probably it may be stated at 75 lakhs of rupees, or three-quarters of a million sterling in value,—and the prompt realization of this very important demand on behalf of the State during the coming agricultural or financial year is very important. Considering the immense sacrifices which Government, acting as trustees of the nation, has made in these distressed districts, it seems but just that, in the interest of the State treasury, the recovery of these demands should be as prompt as possible. It is therefore proposed that these advances should be recovered by the same process as that which is laid down in Act VII of 1868 for the recovery of rent and other dues due to Government on account of the land. The Council will recollect that, under Act VII of 1868, the Collector has to give certificates of the amount due, and then, after proper inquiry or objection, or the hearing of objections, to recover the amount summarily set forth in the certificate. It is proposed then to recover these advances under this same procedure. And inasmuch as the zemindars in many instances have, with a very laudable public spirit, undertaken to become security on behalf of their tenants for these advances, it seems but just to give them the same advantage of the simpler procedure as we propose to take for ourselves. I am sure that the Council, considering the just interest which the general treasury has in the matter, and the propriety of such a very important arrear being quickly realized, will approve of the measure which our honorable friend Mr. Dampier will immediately bring forward on behalf of the Government of Bengal, and the introduction of which has been sanctioned by the Government of India.

Those then are the measures which are on the current list of business.

I desire now to state to the Council the various measures which are in contemplation in the immediate future. In reference to that, I should like to call to your recollection the latest remarks which my distinguished predecessor, Sir George Campbell, left on record regarding the future requirements of

legislation in Bengal. In one passage in the last Bengal Administration Report, Sir George Campbell remarked as follows :—

"He (the Lieutenant-Governor) believes that the time has come when some parts of the revenue law may be reviewed with advantage. Many improvements in regard to the sale law, the law of partition, the law of registration, mutations, &c., and other laws, might be effected" * * * * * * * *

"A general consolidation of the land revenue and rent laws should not be attempted, but some particular laws, or group of laws, such as sale laws, should be carefully reviewed on the first convenient opportunity."

Further, with reference to the repealed enactment of 1793, regarding the prohibition of transit and market dues, Sir George Campbell writes as follows :—

"The Lieutenant-Governor has submitted to the Government of India the necessity for such a law, and the subject is still under consideration."

Having regard to what I may call the legacy of legislation bequeathed to us by the late Lieutenant-Governor, I have carefully examined all the correspondence relating to these various subjects. The first subject which may be evolved from the general dicta, which I have just read to you, may be stated to be the appointment of managers in joint undivided estates. As regards the appointment of managers in joint undivided estates, the position of the matter is in this wise. In 1873 complaints were made from the Hidgellee district, which partly related to salt affairs, which I need not now refer to, but which, among other things, stated that the ryots were subjected to grievous vexations from several collections being made by the various sharers in joint undivided estates.

In reference to that question, the Government of India pronounced as follows :—

"The Governor-General in Council fully approves of the view taken by His Honor the Lieutenant-Governor, that legislation should be resorted to for the appointment of officers to collect rents, so as to provide against a number of joint proprietors in an estate separately and individually harassing the tenants for their dues."

After considerable correspondence, a despatch was submitted by the Government of Bengal, under my own direction, stating the course which, in our opinion, legislation might take. To that despatch we have received a reply, which, with your permission, I will read.

The proposition of the Bengal Government was stated in the despatch in this way :—

"In the opinion of His Honor the Lieutenant-Governor, the best course for remedying the grievance at present felt by ryots who have to pay their rents separately to a number of joint proprietors on the same estate, is to pass a law modifying the Rent Act, 'declaring that no under-tenureholder or ryot is liable to payment to more than one person in respect of the same land; that when there is more than one owner, the agent appointed by the owners, or by two-thirds of them, shall be the person to whom the tenant is liable to pay rent; that such agent, and no one else, shall be the plaintiff in any suit brought to recover arrears of rent; and that any suit brought in contravention of these provisions shall be dismissed with costs'."

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Then the Government of India went on to say:—

"Without committing itself to the principle involved, the Government of India would be glad if His Honor would cause a Bill to be prepared in accordance with his views, and obtain thereon the criticisms of the more experienced officers, and of the leaders of the zemindari interests in Bengal, and also the opinion of some of the more intelligent ryots and talookdars, as to how far the proposed measure will protect their interests."

I dare say some Honorable Members of Council will recollect that we have already consulted the principal zemindars of Bengal; we hope to have the pleasure of consulting them again, and that before long, with the sanction of the Government of India, we shall be in a position to present a measure for your consideration.

The next matter relates to the registration of possessory titles to land. It will probably be known to the Members of Council that there is an old law, dated so far back as 1793, which compels the proprietors of land all over the country to register their names and the shares belonging to them; but that Regulation has never been strictly enforced, and its terms are considered to be somewhat obsolete and not exactly suited to the requirements of the present day. Consequently it is believed that if the registration is now to be rendered compulsory, it will be desirable to pass a new law for that purpose. Well, the subject was very much discussed for many years subsequently to 1837, and at last the Board of Revenue, then represented by our present colleague, the Hon'ble Mr. Schalch, recommended that a new law should be passed for rendering this registration compulsory.

I will trouble the Council for a moment by reading some passages from the despatch of the Board of Revenue on the subject. They run thus:—

"Previously the Government had, in 1854, forwarded to the Board a letter, together with a draft Bill upon the same subject received from Mr. Sconce, the Judge of Dakha, but both Bills seemed to have dropped after the receipt of Sir Barnes Peacock's Minute.

"Since that period the Legislature of Bengal has imposed many new duties of importance on zemindars, and obedience to the law is, in most instances, to be enforced * * * * * * is dependent on a knowledge of the persons in actual possession of the estates in question, and responsible for the discharge of the duties imposed upon them.

"Under former laws similar penalties being recoverable by the sale of the estates themselves, it was a matter of comparatively little importance to know the person in possession; but since the passing of Act VII (B C) of 1868, such penalties, even when recoverable as arrears of revenue, can be levied only by the process of certificates having the force of decrees of the civil court for money, and consequently when the person in possession of the estate to which the discharge of the duties imposed by law attaches is not known, the recovery of the penalty becomes certainly a matter of great difficulty.

"Under these circumstances, it appears to the Member in charge" (that is, to Mr. Schalch) "that it has now become absolutely necessary to enforce a registration of the names of the parties in *possession* of estates, in view to their being held the parties responsible for the discharge of the various duties which the law imposes on them as proprietors, and the Member in charge is of opinion that an endeavour should be made to devise a practical scheme for the purpose, notwithstanding the various serious difficulties suggested by Sir Barnes Peacock in his Minute above referred to."

* * * * * * * * *

"But such objections could not, the Member in charge thinks, be urged against a law the object of which would be solely to determine summarily the question of possession, in

view to fix the responsibility of persons holding actual possession of estates, for the discharge of certain duties imposed upon them by the existing law, which would leave such decisions open to the final determination of the civil courts, and would in no way interfere with the existing law in regard to the prosecution and decision of all questions of right and title in the civil courts."

Well, the view contained in these extracts is, I understand, entirely adopted by our honorable colleague Mr. Dampier, who is also an authority in revenue matters in Bengal, and he desires soon to prepare a measure for your consideration upon the subject. I have had the advantage of consulting some of the most eminent zemindars in Bengal as to whether such a registration could be effected without any undue vexation to the parties concerned, or without any way affecting the various rights and interests which have grown up under the Permanent Settlement, which rights and interests, I need not say, it is the duty of Government entirely to maintain. I understand that such a registration could be effected without any serious difficulty. Some difficulties in detail may indeed present themselves, which, doubtless, would be removed upon consideration by such competent gentlemen as our honorable colleagues Mr. Schalch and Mr. Dampier; and I should be sanguine that the public spirit which the zemindars so largely evince—the best proof of which has recently been seen in their praiseworthy conduct during the late famine.—I should hope, I say, that the zemindars would not object to register their names and stand forward in their proper capacity as landlords and eminent citizens, charged with a variety of public obligations, some of which they have voluntarily accepted and others of which are imposed upon them by law.

The next measure on my list relates to the possible improvement of certain portions of the sale law, Act XI of 1859. Here again it is said by some authorities that some notice should be given to the native gentlemen from whom arrears are due before their estates are advertised for sale in the *Gazette*; also that sometimes estates are advertised for sale for arrears which bear a very small proportion to the amount due. I understand that it might be possible to insert one or two conditions to this effect in the existing law, provided always that any failure to fulfil such conditions on the part of the revenue authorities should not affect the validity of the sale which might have to be carried out. I will mention a matter in this connection because it illustrates the value of registration of possessory titles (to which I have just been adverting). If, for instance, you ask a Collector why he does not serve a notice upon the zemindar who is in arrear before advertising the estate for sale in the *Gazette*, he will tell you that, in the absence of registration, it is difficult to know who is the particular person from whom the arrear is due, and in default of obtaining such information he proceeds against the estate. I am bound to say, however, that, after inquiry from zemindars in various parts of the country, I do not find that the present sale law operates with any excessive harshness; on the contrary, I believe it is admitted that the existing sale law is administered in a most judicious and careful manner by the Board of Revenue, which Board is represented on this Council.

The next subject relates to the realization of rent due from Government ryots, and also other dues pertaining to Government and relating to the land.

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There is found to be a particular difficulty here, which has crept into the interpretation clause of the Act No. VII of 1868. As the Council will recollect, the object of this Act was to summarily realize the amounts set forth in certificates signed by the Collector. Well, the question arose as to what tenures these dues should be realized on. The said tenures were described in the interpretation clause, but that clause said that the tenures in question were transferable tenures. Now, the insertion of the word 'transferable' raises a question regarding non-transferable tenures; and inasmuch as transferable tenures only were mentioned, the consequence is that non-transferable tenures are altogether out of the Act. The result is that, according to the strict interpretation of law, this realization cannot be had in tenures not transferable, and, as the Council is aware, that includes all persons who are commonly called 'tenants-at-will;' and inasmuch as a number of estates in different parts of the country have fallen under the hands of Government, on which rents are collected through Government officials, it would become, without an amendment in the law, extremely difficult to collect from tenants-at-will at all. The consequence is that it becomes immediately necessary to amend this defect, and so to word the interpretation clause that it shall refer to non-transferable as well as to transferable tenures.

The next subject relates to partitions, known by the now famous name of *Bulwaras*.

The Council is well aware that not unfrequently these cases go on not only for years and years, but I may say for many decades of years. It is consequently desired to slightly amend the old law upon the subject, with a view to render its procedure more simple and expeditious, and to remove the obstructions and obstacles which now exist. There is no desire to make any change of principle; the matter is simply one of, what I may call, executive procedure.

The next subject relates to the laws regarding irrigation. Doubtless you are all aware that irrigation is happily becoming a matter of great importance. Canals are spreading in some parts of Orissa, Southern Bengal, and Behar. As regards the Orissa districts, we have a law providing for the realization of the dues to Government on account of the water-rate; but this Act does not apply to Midnapore, for instance, and other districts in Bengal to which irrigation is being, or may yet be, extended. Then, again, there is no law regarding the same subject which can be applied to Behar.

We therefore propose to re-examine the Orissa irrigation law and then to extend it, after the necessary revision, to Midnapore and other districts in Bengal. Possibly we may ask you to legislate for the extension of the same law to Behar; but the Behar system, as regards tenures and the system of irrigation, differs considerably from that of Orissa, and is probably more likely to assimilate itself to the law and practice of the North-Western Provinces. So it may be found that the Orissa and Bengal Bill will not be entirely applicable to Behar. In that case we shall have to trouble the Council with a second enactment relating to Behar.

The next subject relates to the Bengal Municipalities Bill, which, in 1872, was passed after great labour in this Council, and was not assented to, as you will recollect, by His Excellency the Governor-General.

But while refusing assent to the measure, the Governor-General communicated to the Government of Bengal the following remarks, which I will trouble you by reading:—

"While, however, His Excellency has felt it to be his duty, for the above reasons, to withhold his assent from the Bill, he fully recognizes the fact that it contains many useful amendments of the existing law with respect to municipalities in Bengal; and the discussions which have taken place in the Legislative Council of Bengal have satisfied him that some changes in that law might be made with advantage.

"His Excellency cordially concurs with the opinion expressed by the Lieutenant-Governor that 'he had rather see a little done voluntarily by the people themselves through their representatives than a great deal done under pressure from above,' and that 'his view is to prefer a little done voluntarily to a great deal done unwillingly and in a discontented spirit.' His Excellency believes that under Act VI of 1868, and the District Road Cess Act of 1870, sufficient powers now exist for the introduction into Bengal of a system under which municipal and local affairs may gradually come to be administered by bodies in which the people are represented, and any proposal which the Legislative Council of Bengal may make to amend Act III of 1864 in the same direction would command His Excellency's favorable consideration.

"It might also, in His Excellency's opinion, be desirable to amend the present law so as to enable municipalities under Acts III of 1864 and VI of 1868 voluntarily to contribute in aid of education within their districts."

In view to what I may call these general instructions, we propose to take up the lost Bill, and to reconsider those portions which do not come under His Excellency the Governor-General's objections, or which have, as you have already seen, commended themselves to His Excellency's approval. In connection with this subject, we propose to reconsider the law relating to the status and the remuneration of village police, which was passed by this Council in the time of my predecessor, Sir William Grey. That law has as yet been extended to only a few districts, with perhaps a partial success, but some law is still required for the remaining districts of the country

We propose to consider how far Sir William Grey's law, as I may call it, would be suitable for this purpose, and then embody it in the Bill to be laid before you regarding municipal affairs generally; the said Bill to be nothing more than a portion of that which this Council has already passed in 1872.

Regarding a cognate matter, our attention has been drawn to a letter addressed to the Government of Bengal by Mr. MacEwen, of the Small Cause Court in this city, in which he brings to notice the great number of Municipal Acts relating to this capital, which Acts number no less than fifteen, and have been passed at various times during a period of nine years. He represents, from his practical experience, the great trouble caused both to officials and non-officials from this multiplicity of laws relating to municipal affairs, and recommends that they be consolidated into one enactment. I hope that our honorable colleague, the Municipal Commissioner, will be induced to undertake the consolidation, and to aid in the codification of those several enactments which he now administers with so much vigor and efficiency.

The next point relates to an addition to the existing law relating to the official inspection of steam boilers and prime movers in this city. It has been represented by the inspecting officers that they occasionally find not only

defective boilers, but good boilers and good machinery placed in the hands of very untrained and incompetent persons, and that there is as much danger to the public from the latter state of things as there is from the former.

We shall therefore probably have to ask the Council to include the character of the establishments in the subjects which are to be open to official inspection.

The next subject refers to the erection of boundary pillars, which are being, not which have been, surveyed. It was some time ago considered that the erection of such pillars should be at the expense of the proprietors of the land which is being surveyed. I have just received a definite despatch from the Government of India, which I desire to read:—

"Extract from letter No. 757, dated 18th December 1874, from the Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce, to the Secretary to the Government of Bengal

* * * * * * *

The Governor-General in Council, on a full consideration of the papers on the subject, desires that legislation may now be resorted to in order to enforce an obligation which is imposed on all landholders elsewhere in India, and I am to request that a Bill may be introduced to this effect into the Legislative Council of His Honor the Lieutenant-Governor as soon as convenient."

It will therefore be my duty to cause a Bill, in accordance with these instructions, to be presented to this Council. At present our honorable colleagues are aware that the only portions of Bengal now under survey are a very small corner of the Midnapore district, and also certain "Dearah" lands, as they are called, bordering the great rivers, and certain portions of the temporarily settled districts of Orissa, so that the application of the principle will apparently be of a limited character.

The next subject is that of the Orissa ports. The Council will readily understand that the shipping resorting to the port at False Point ought to pay port-dues, just as is the case with regard to other Bengal ports. That port is at present free for this reason, among other reasons, that in the list of ports contained in the Act empowering Government to levy port-dues, False Point is not included, and consequently port-dues cannot be levied there. The fact is that that port has risen into importance subsequently to the passing of this Act.

The Council is aware that an Act relating to ports and port-dues generally throughout India is at present before the Legislative Council of the Governor-General. It is possible that this Act will practically enable us to levy port dues at False Point; but if we find that such power is not given us by the general enactment, all that will be necessary will be to ask this Council to pass a short Act, including the port of False Point in the list contained in the schedule to the former Act.

The next subject—I am getting very near the end of my subjects now—is that of Police. I will just read the last dictum of the Government of Bengal upon that point in 1873:—

"The Lieutenant-Governor thinks that Act V of 1861 requires amendment in this and one or two other points. It is in the power of the Legislature of Bengal to amend this Act, and it has already done so with the full concurrence of the Government of India, as will be seen from the correspondence noted on the margin, on the subject of

modifying that important condition of the Act by which the entire area of the territory under this Government had been formed into one general police district * * * * * * *

the Lieutenant-Governor is of opinion that the law had better be dealt with in Bengal for Bengal. In case, however, the Government of India should have any objection to that course, His Honor reports the circumstances which seem to him to necessitate an amendment of the law, and he would be glad to be favoured with the instructions of His Excellency in Council as to the course which should be taken, *i.e.*, whether he may propose in the Bengal Council the necessary amendment, or whether the matter will be taken up in the Governor-General's Council."

To this we received an answer from the Government of India in this wise:—

"In reply, I am desired to say that the cases which the Act is shown not to reach are of a kind that may occur in other provinces, and His Excellency the Governor-General in Council therefore proposes to consider the question of giving general extension to an amendment of the kind proposed Moreover, it is advisable to avoid local emendations of so important a law as Act V of 1861 as far as possible, when the defect to be remedied may be of general prevalence. I am therefore to request that you will be good enough to move the Lieutenant-Governor to suggest to the Government of India the terms of the proposed amendment, and also to state whether His Honor wishes any further amendments in the law."

We have taken steps, by consulting the various authorities concerned, to comply with that condition. I mention the matter now in order that the Council may be aware of the precise state of the proposed legislation on the subject, and to explain why it is not in my power to lay a Bill at present on the table of this Council. In connection with this subject, there are two points which Honorable Members are aware have very much attracted attention of late. Act V of 1861, though it did recognize the position of Magistrates in respect to police in very general and broad terms, yet it did not state with sufficiently legal precision the nature of those relations. The Act also omitted, or rather deliberately did not make any mention of the Divisional Commissioners. The Council knows that in such provinces as those of Bengal, the Commissioners form an important link between Government and the District Officers, and therefore it is desirable that their power and influence should be brought into play regarding the management of police.

The last subject I have to mention is the prohibition of the levy of illegal cesses on navigable rivers, high roads, and in public markets. This matter formed the subject of some correspondence between the Government of Bengal, as administered by my predecessor, and the Government of India; and we have recently received an important despatch from the Government of India upon the subject, regarding which further local inquiries are being made. There are one or two passages in that despatch which I should like to read to the Council. As regards hâts or markets, the Government of India state as follows:—

"So far, therefore, as the Government of India can judge this question from a review of the evidence laid before them, the inference is that the present system of hâts has grown up in a natural and healthy way; that under it trade flourishes and a brisk competition exists. It may or may not have originated in abuse; but the question now is, whether it causes actual evils which are felt and can be remedied by active interference, remembering

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that we may thus be interfering with the spontaneous outgrowth of the wants of the people, and raising some very embarrassing questions of private right."

Then another passage is in this wise:—

"Another distinction is to be made between hâts or markets which are private property and those in which the public have some right * * * Clearly when the public have a right, it would be desirable to assert it in some effectual way. But setting aside those cases in which compensation is received by the zemindar under the Regulation of 1793, it seems very doubtful whether any right exists for the public to use for the purpose of markets ground of which the legal ownership is vested in private persons."

Another passage runs thus:—

"Another point which might usefully be dealt with by legislation is the acquisition by prescription of exclusive privileges to hold fairs, or of rights to levy dues when compensation for their stoppage has been given.

"The sum of what has been said is that the Government of India are not, upon the evidence now before them, disposed to interfere with the present system of hâts, but rather to place the law in such a state as to leave the action of individuals practically free, but to provide expressly that no length of usage shall give the owner of land any prescriptive right to hold a hât. Probably, as above intimated, there is good ground for applying a different principle to town markets and some other places, but that must be the subject of further inquiry. The law might also expressly preserve the public rights in all cases when compensation is given, and should make the illegal levy of duties an offence punishable with fines."

Then further passages of the despatch set forth certain principles regarding the levy of tolls on roads, at the entrances of towns, and on navigable rivers. They run as follows:—

"The next point to be considered is the levy of tolls by zemindars on roads and at the entrances of towns. This species of exaction, as well as that abovementioned, is illustrated by the case of Dinagepore. It is also illustrated by the case of Phulwari. With respect to such cases as these, the Government of India have only to express approval of the orders of the Bengal Government, and to say that the law proposed above, respecting the illegal levy of duties, would apply to these cases also.

"It is, however, always to be remembered that even in public places, the zemindars may be accustomed to render services for which they may justly make a charge, such as cleansing, weighing goods, and so forth, and that, if the payment is stopped, the public may suffer. The proper course in such cases would seem to be to take a regulative power, such as has been above intimated, as proper for town bazars

"The next subject is that of tolls levied from the traffic on navigable rivers.

"As regards the orders given on this subject, it has been not unnaturally mixed up with the remaining subject, viz. that of the title of the crown to the soil of and adjoining navigable rivers. In paragraph 10 of the resolution under consideration, the principle is apparently enunciated that the whole channel of a navigable river up to high-water mark, *i.e* up to the height of ordinary floods in the rainy seasons, belongs to the Crown. The Government of India do not think that such a principle can be maintained Not only do the great rivers of India change their course frequently, but they regularly cover in the height of the rainy season a great tract of country which is dry land at other times. The land thus flooded is extremely valuable; the best crops are grown on it, the highest rents are paid for it, and the revenue charged on it in proportion. It would be very alarming to those who have always considered themselves and been treated as the owners of such land to be suddenly told that the Crown was the owner, and that they had only the use of it.

"Neither does it seem necessary for the present purpose to assert the title of the Crown to any portion of the soil of or adjoining to rivers; that they may be left to be dealt with either by judicial decision or by legislation when the question arises. At present all that is wanted is to ensure the just use of navigable rivers by the public. This would be amply secured

by such legislation as is suggested. The general principle which the Government of India are prepared to affirm is, that the public have not only a right to use the stream of navigable rivers, but the right to use their banks (wherever those banks may happen for the time to be) for mooring, towing, punting, and other purposes incident to the right of navigation; that they may have also the right of free communication between the existing margin of the water and the former landing-place of the nearest thoroughfare wherever the river has ebbed or shifted its course. If the riparian owners furnish camping-ground, grass, or fuel, it is just they should be paid; but it may be a question whether such matters are better left to private bargain, or whether they are so likely to resemble and to grow into the objectionable traffic dues that the executive should have power to regulate them."

It may therefore, the Council will see, with reference to these general principles as laid down by the Government of India, be necessary to lay some measure before you, the object of which would be the re-enactment, with suitable amendments, of the old Regulation of 1793. Of course, if we should prepare such a measure, the Council will understand that great care must be taken not to interfere with the private rights in property in these markets; and which rights, I know, from what I have seen during my travels, are existing in markets scattered all over Bengal.

I am afraid that I have troubled you at great length in laying these subjects before you, but I desired to state as briefly as possible the matters which you are likely to have brought before you in the immediate future. I am not desirous of placing before you any ambitious programme of legislation. These various subjects are strictly matters of business which have been long pending; they are not at all new; on the contrary, they have been discussed by all the best informed local authorities, and I hope that useful practical enactments may be passed upon them, which shall command the assent of all concerned.

Neither is there any hurry regarding the preparation, introduction, or passing of those measures. I hope that, with the assistance of our honorable colleague, Mr. Dampier—whose services the Government of India have allowed to be placed at our disposal—we may be able to prepare those measures within the next two or three months; that then some of them may be in a state for submission to this Council, perhaps for reference to Select Committees; that subsequently they may be considered leisurely during next summer and autumn, and that, finally, we may be in a position to proceed, say next November, with the passing into law of at least some of them.

Lastly, I must ask you to bear in mind that all our proceedings in these matters are entirely subject to the approval of the Government of India, and specially to the assent of His Excellency the Governor-General, which of course I am unable to guarantee in any way, excepting in so far as such approval may be indicated in the despatches of the Government of India, from which I have just been reading extracts.

With these remarks I think I may call on our honorable colleague Mr. Dampier to speak on the motion which is set down to his name."

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier said:—"Sir, the motion which stands in my name is happily one that does not require me to say much, for the objects of the measure have been laid before the Council by Your Honor in a full and

complete manner. I think, therefore, that I shall be consulting the wishes of the Council best by releasing them to attend to other important claims upon their time. I shall therefore merely put, in a formal shape, the motion for the introduction of the Bill, the object of which Your Honor has been explaining to the Council.

I beg to ask leave to introduce a Bill for the recovery, by summary process, of advances of money and grain made by the Government in the course of the relief operations."

The question was then put, and leave was given to introduce the Bill.

The Council then adjourned till Saturday, the 2nd January 1875.

Saturday, the 2nd January 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble Baboo Juggadanund Mookerjee,
The Hon'ble Baboo Digumber Mitter,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble F. G. Eldridge.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr Dampier presented the Report of the Select Committee on the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. He said, as it was so long since this Bill had been in any way before the Council, and as some of the members present were not in the Council when the Bill was introduced, perhaps he would do well to read over to the Council the Statement of Objects and Reasons relating to the Bill:—

"The attention of the Government has for some time past been drawn to the increasing number of offences against marriage shown in the criminal returns, especially in the Eastern and Mahomedan districts. The remarkably small number of convictions obtained in such cases, taken together with their increasing numbers, seemed to indicate the existence of a grievance which the criminal courts are at present unable to redress. Inquiry has proved that this is in fact the case. The loose notions regarding the marriage tie prevalent among the lower orders of Mahomedans lead to the frequent institution of criminal charges; while the absence of any authorized system of registration of marriage and divorce (since the office of kazi ceased to be recognized by law) makes it difficult to furnish the amount of proof which the criminal courts require to warrant their taking action.

"It appears to the Government that the legal recognition of an authorized system of registering Mahomedan marriages and divorces will go far to supply the existing want, and this Bill provides such a system. The Registrar will, as regards such registration, take the place which was filled by the old kazis, and certified copies of extracts from his register are made *primâ facie* proof of the facts recited therein. But the registration of marriages and divorces is left optional with the parties concerned, and all questions of remuneration are left to be settled between the Registrar and the parties who avail themselves of his services."

On those lines the Bill was laid before this Council and referred to a Select Committee in November 1873. Since then the famine had caused all legislative work to be suspended, and it was only lately that the Select Committee had been sitting and considering this Bill. To-day he had the honor to present their report. He should not move to-day that the Report of the Committee be taken into consideration, because it had not yet been placed in the hands of the members; but at the next meeting of the Council he proposed to make that motion. The Report had not yet been printed, and he would only now mention the principal points as to which the Committee proposed to make alterations in the original Bill. The Council would see that the Committee proposed to adhere to the name of "kazi." There was some little discussion upon this point, but upon the whole the Committee agreed that it would be better to keep a name which was familiar to the Mahomedan population; the great object of the proposed measure being that it should be a popular one. The Committee had empowered the Lieutenant-Governor to grant a license to any person to perform the functions of a "kazi" under the Act, and in the interpretation clause had defined a "kazi" to be any person who was duly authorized under this Act to register Mahomedan marriages and divorces. None of the other functions of the old kazis were to be vested in them by this Bill, although he (MR. DAMPIER) had little doubt that a custom would grow up under which the people would resort to them amicably for other social purposes. Still the Act would not vest in them any authority, except for the registration of marriages and divorces when application was voluntarily made to them for such registration. The Committee had provided that not more than two kazis might be appointed for one tract of country; and that, where two kazis were appointed, one of them should be a member of the Sunni, and the other of the Shiah sect. That, MR. DAMPIER believed, would be a popular arrangement.

The Committee had particularized the parties by whom applications for the registration of marriages and divorces might be made, and the persons who should sign the entries in the register. A good deal of care had been necessary in the framing of this part of the Bill, because, for instance, a marriage might be made by minors, in which case their guardians might appear for the parties, or the bride might be a *purda nasheen* woman who could not appear before the kazi, and then she would have to be represented by a vakíl. The Committee had therefore had to specify in some detail who were the persons authorized to apply for registration, and who should be the signatories under each of those cases. In these matters the Committee had to rely mainly on the knowledge of Moulvie Abdool Luteef.

The Hon'ble Mr. Dampier.

As to divorces, there was one class in which the husband divorced the wife, at the same time paying to her so much of the dower as was termed "deferred" in the English translations of the Mahomedan law books: that was to say, the portion of the dower which was not claimable until the marriage was dissolved by death or divorce. In these cases it was unnecessary for the wife to appear before the kazi. The husband had only to appear and say he had divorced his wife, and to bring forward the witnesses to the divorce. Then there was the other class of divorces called "khula," in which the husband and wife agreed to separate, the wife giving up all right to the marriage portion and all other claims on the husband. In these cases the application must be made by both husband and wife jointly, as the wife voluntarily gave up certain rights. Perhaps the subject might be a new one to some of the members of the Council. Their colleague, Moulvie Abdool Luteef, had printed a lecture on the subject, and before MR. DAMPIER asked the Council to proceed further with the Bill, he would cause the lecture to be circulated. He thought it would be found both interesting and useful.

The Select Committee had provided that copies of entries in the registers should be given without charge at the time of registering the marriage ordinance. They had empowered the Lieutenant-Governor to make such rules as might be required for the working of the measure. One point to be provided for by the rules was important, namely, the attendance of kazis at marriages. It was sufficient under the Act to register a marriage after the ceremony was over; but it was understood that the more respectable members of the Mahomedan community would like to have the kazi personally in attendance at the ceremony as well. This would afford a double security as to the proof of the marriage; and to meet such cases the Committee had empowered the Lieutenant-Governor to make rules as to the remuneration of kazis for their attendance at marriage ceremonies and for regulating such attendance. They had fixed the fee for registration at one rupee. As mentioned in the Statement of Objects and Reasons, it was intended originally to leave it absolutely to the kazi and the parties to arrange between them what fee should be paid. But since then the Committee had received from the Bengal Secretariat papers containing a mass of opinions of the leading Mahomedan gentlemen in the mofussil. A great preponderance of opinion was in favor of some fee being fixed, on payment of which it should be compulsory on the kazi to register. They had, therefore, fixed one rupee as the fee, but had added a section providing that nothing in the Act should render it illegal for the kazi to accept a gratuity in addition to the fee if voluntarily offered. The more respectable Mahomedans would probably consider it a point of honor to make the kazi a suitable present on these occasions. Another important innovation made in the Bill was, that the Committee had considered it necessary to place kazis and their offices under some control, and on this point there was some discussion in Committee. But they had come to the conclusion that the District Registrars of Assurances would be the proper controlling authority, *i.e.* practically the Magistrate and Collector in mofussil districts. The Committee had provided that, when a

kazi refused to register a marriage or divorce, he should record the reason of his refusal. The only reason for such refusal would be a question of identity,—a question whether a person who appeared (whether as a principal or witness) was not the person whom he or she represented himself or herself to be. The kazi would have no right to refuse registration on any other ground; and the Committee had provided that in case of such refusal there should be one appeal to the Registrar of the district, whose decision should be final. They had provided forms for three registers to be kept by the kazi—one was the register of marriages, the second a register of divorces not being *khula*, and the third a register of *khula* divorces. As to the forms of the registers, the Committee had not been able to arrive at unanimity. At the request of their colleague, Moulvie Abdool Luteef, the majority of the Committee had put in the forms in the schedule annexed to the Act certain columns requiring specification of details of the dower for the sake of bringing the point before the Council. The majority of the Committee (Mr. Schalch and Mr. Dampier, for they had not the advantage of the learned Advocate-General's assistance) thought it would be better to omit these columns from the registers, because they would be touching on difficult questions which were beyond the scope of the Act. In this Act the Council were not attempting to deal with the difficult question of titles to Mahomedan property, but merely to provide trustworthy evidence as to the fact of the marriage or divorce having been effected; and therefore it seemed to the majority of the Committee that any specification of the particulars of the dower in the registers would be going entirely beyond the scope which the Council had desired to give to the Bill. With these remarks MR. DAMPIER laid on the table the report of the Select Committee which would be printed and circulated to the members with the Bill as revised, and at the next meeting he would move that the report of the Committee be taken into consideration.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The HON'BLE MR. DAMPIER said that the next motion in his name was to move that the Bill for the recovery, by summary process, of advances of money and grain in the course of the relief operations be read in Council. This Bill was circulated, and had been, he believed, in the hands of members for three days, as was required by the rules of the Council. At the last meeting His Honor the President had said almost all that should be said at this stage of the Bill, and MR. DAMPIER had now only to remind members of what they knew very well already, that the Government had advanced something like three quarters of a million sterling to ryots during the famine; that sometimes money was advanced on no security whatever, sometimes on the security of zemindars, and sometimes on the joint security of villagers. He supposed that no one would deny that after what the Government had done, it was in a position to ask that this Council should give it all the assistance it could in recovering the advances made. Of course the Collector, in making these advances, entered them in his book; and in the simple case in which the Collector was to recover from the person to whom the advance was made, no one could be in a better

position than himself to know that the money was due. He had only got to look at his own accounts and so satisfy himself. It had therefore been provided in the Bill which MR. DAMPIER had the honor to lay before the Council, that arrears due on account of advances should be "demands" under the provisions of Act VII of 1868 of this Council; the consequence of which would be that the Collector, being satisfied that the amount was due, could make a certificate declaring the amount to be due, which should be filed in his office according to the certificate procedure. After the certificate was made, it was open to the person affected to come forward and make any objection he might wish to offer, and the Collector would then give him time, or amend his order if he should consider it necessary to do so. The certificate, as confirmed or modified by the Collector on such objection, would have the force of a decree passed in the civil court against this particular debtor. This Council had once formally accepted the principle of these certificates by passing Act VII of 1868. It was considered better for all parties that in cases in which the Collector was in a position to judge that an arrear was due, he should be trusted to pronounce the amount to be due without carrying the ryot to the civil court, which in the end would double and treble the debt, as Hon'ble Members well knew: therefore Mr. Dampier had no doubt that the Council would see the propriety of extending that principle to the arrears now in question which were within the knowledge of the Collector.

Next, as to the cases in which zemindars and communities of villagers had stood security for advances. When they had to pay any money for the repayment of which they had stood security, it was only fair that the Government and the legislature should give them the same assistance in recovering their dues from the real debtor that they gave the Government in recovering directly debts due to them. Here again the amount of the debt was absolutely in the knowledge of the Collector. No one knew that the money had been advanced to the ryot better than the Government officer who advanced it, and the Collector also had the best means of knowing that the money had been repaid, not by the person who received the money, but by his security for him. It was nothing but fair that after the sureties had paid money for the ryot under such exceptional circumstances, they should be given exceptional facilities for the recovery of their dues.

The Bill provided that the zemindar should give in an application to the Collector specifying the amount due and requesting him to issue a certificate. The Collector would then issue a certificate. The ryot might come forward to make his objections; and when the Collector was satisfied, he would confirm or modify his certificate, which would then have the effect of a decree. Here again the object was to save the worry and expense of a civil suit as much as could possibly be done.

The HON'BLE MR. RIVERS THOMPSON said he wished to submit to the hon'ble member in charge of the Bill whether it was not desirable that these balances should be recovered as arrears of revenue instead of as demands under Act VII of 1868. It would be in the knowledge of the Council that claims adjudged to be due as a Government demand under the Collector's certificate could after-

wards be contested in a regular suit in the civil courts; whereas in cases decreed as arrears of revenue no civil suit would lie. The procedure under Act VII of 1868 was much the same in both cases; and if the object of the present legislation was to prevent the harassment and expense of civil actions, it seemed clear that the process of recovery as arrears of revenue would at once secure the object aimed at without opening the door to subsequent litigation after the Collector had issued his certificate..

The HON'BLE MR. DAMPIER said he particularly omitted the consideration of that point, because he hoped to have the advantage of the opinion of their colleagues in committee. He had, however, in the Bill made the debt an arrear of demand only. What his hon'ble friend had said was very true, that it would be better to make the certificate of the Collector final, and not contestable in the civil court; and it would be very desirable to do so if the committee who were appointed to consider the Bill saw fit.

THE HON'BLE BABOO DIGUMBER MITTER SAID—"I must confess that I do not see how the provisions of Act VII of 1868 can be made applicable towards the recovery of loans in money and grain which the Government had advanced to the ryots during the late scarcity, if, as I presume, it is the intention of the Hon'ble Mover that the ryots' tenures should be held primarily liable for these loans. That Act contemplates the recovery of the revenue demand by the sale of tenures held directly under Government, and which, by the customs of the country, are transferable. I am afraid that the majority of the ryots who had taken such advances, even if they held any land at all at the time, are either tenants-at-will, or at best have only a right of occupancy in the land they cultivate. The holding of the first, I need not say, is not saleable, and that of the latter, even where saleable, is not likely, in many instances, to fetch a price at all sufficient to cover the advance made: indeed, I feel doubtful if any ryotee tenure held under the zemindar without a registered *mowrosee* lease will obtain purchasers when offered for sale to the highest bidder at a public sale, inasmuch as the purchaser has no likelihood of obtaining possession of what he purchased without much litigation, and without the active co-operation of the zemindar under whom the tenure is held. In fact it will be difficult, if not in many instances altogether impossible, to obtain the necessary information, without which the tenure intended to be sold cannot even be notified for sale. I mean the boundaries of the tenure, the quantity of land comprised in it, the rent payable in respect thereof, and the terms and conditions under which it is held of the zemindar. The proposed measure does not make any provision to that effect, and I do not see what means can be devised towards obtaining correct information on the points in question, except through the intermediation of the zemindar under whom the tenure is held, and I cannot guarantee that many zemindars will volunteer such information, especially when there are no means of testing their correctness. The same objection will apply to the recovery of these loans by the sale of the tenures of the sureties, where the sureties are a collection of villagers. The difficulties alluded to are not likely to be met with in the sale of tenures held directly under Government, and hence it is that

the Act in question has worked smoothly in the recovery of the Government demand from its own tenants; but I am afraid it cannot, by any possibility, be made applicable to the purposes of the proposed measure.

I am fully alive to the sacred character of the debt, and to the necessity of enforcing its speedy repayment in justice to the general tax-payer. The sum covered by these grain loans, though large in itself, represents but a small proportion of the vast outlay which the Government has incurred in affording relief during the late scarcity. Nothing will therefore afford me greater satisfaction than to render such assistance as lies in my power in devising some project of law for the recovery of these loans; and if I am permitted to offer a suggestion towards that end, I would respectfully submit that, instead of proceeding against the holding of the ryot, it would be much more safe and effectual to proceed against his crop. I do not deny that my proposal is open to many objections, but they do not appear to me to be of such a nature as might not be overcome by fair and equitable means. The great objection which might be taken to it is, that such a proceeding would deprive the zemindar of the best security which by law he now possesses for the punctual recovery of his rent, inasmuch as both by prior and the existing laws the produce of the land is held to be hypothecated for the rent payable in respect thereof. But this difficulty, I respectfully submit, might be very equitably met if the repayment of these loans were spread over a number of years, say from three to five, according to the condition and means of each debtor, as in that case the debtor's crop would, I think, be quite sufficient to meet each instalment as it fell due, after fully satisfying the zemindar's claim. It must not be lost sight of that to pay the Government claim the ryot will have to sell two and a half times as much rice as he had received in advance; for there is little doubt that rice will sell for thirty seers the rupee this year, whereas the ryot had to purchase it at twelve seers the rupee from the Government stock. Their case is a hard one, and is well deserving of the kind and indulgent consideration of Government. The measure which I have taken the liberty to propose, while affording greater facility and certainty in the recovery of the Government dues, might, I humbly think, be the means of saving the ryots from certain ruin, as I am afraid such would be the case if the Government demand were enforced in one payment."

The Hon'ble Baboo Juggadanund Mookerjee said the summary power proposed by the Bill to be given to the Collector seemed to him to be a reasonable mode of procedure, because he thought the Collector was the person who ought to know what was the condition of the ryot, and what were the means by which the debt which was incurred should be paid. The Collector, no doubt, would do his best to save the ryot, and at the same time he would also take care that the Government money should not be lost. For these reasons, Baboo Juggadanund Mookerjee thought that the summary power proposed to be given to the Collector was proper and good. But there were certain difficulties in dealing with these matters. The Act which was to be made applicable was Act VII of 1868, and the principal of those difficulties appeared to him to be that in that Act no discretion had been left to enable the Collector to

deal with leniency if, in his judgment, he thought leniency was required. And therefore BABOO JUGGADANUND MOOKERJEE proposed that some sort of discretion should be left in the hands of the Collector by which, if he thought that certain difficulties would arise, or that the ruin of the ryot was imminent, he might, in such cases, exercise that discretion. If that were done, BABOO JUGGADANUND MOOKERJEE thought the objections raised by the hon'ble member who last spoke would be met entirely; because the whole of his objections referred, not to the summary procedure, but to the proceedings which would be taken after the certificate was made, and after the Collector had declared that such and such money was due. Therefore his hon'ble friend's objections referred to the proceedings *after* the making of the certificate. The difficulties which had been brought to notice by the hon'ble member would be met if a discretion was vested in the Collector; and because that discretion was wanting in the Act of 1868, he thought some discretion should be given to that officer to deal with cases under this Bill.

The HON'BLE MR. DAMPIER said, as he understood the objection of the hon'ble member on the right (Baboo Digumber Mitter), it appeared to him to be founded to a certain degree on misapprehension. He understood the hon'ble member to speak as if the realization under the Act could be made by the sale of the tenure of the debtor, and by no other means. But that was not the case. The certificate of the Collector simply had the force of a decree; and amongst the things that might be sold in execution, tenures were included. It gave the power of selling them, but it also conferred the power of proceeding against the personal property of the debtor. By Section 24 it was enacted that every certificate made by the Collector might be enforced by all or any of the ways and means mentioned and provided in and by Act VIII of 1859 for the enforcement of decrees for money. The certificate being nothing more than a decree for so much money due to the Government, the Collector, as agent of the Government, would of course be able to exercise the discretion which another hon'ble member (Baboo Juggadanund Mookerjee had suggested should be given to him. The Act said that the certificate "may" be enforced; not that it "must" be enforced at once. From what hon'ble members had seen to be the action of the Government during the famine, they might fairly assume that the Collector would treat the debtor with all possible leniency. When the Government had helped the tenure-holder with a loan of food or money, it was hardly to be supposed that the Government officers would sell their tenures and reduce them to pauperism immediately. Speaking personally (for he had not had the advantage of His Honor the Lieutenant-Governor's views upon the subject), MR. DAMPIER felt that the Government officers might be relied on to treat the ryot with all forbearance, especially as regards the sale of his tenure. No doubt, however, this was a point for the consideration of the Select Committee, on which he should ask the hon'ble member on his right (Baboo Digumber Mitter) to sit, and very likely some provision of this sort might be introduced, that a tenure should not be proceeded against until less ruinous measures had first been tried.

The Hon'ble Baboo Juggadanund Mookerjee.

THE HON'BLE MR. HOGG said he agreed with the hon'ble member opposite (Baboo Juggadanund Mookerjee) that the power of the Collector should be well considered and carefully defined, for it would be hard to proceed summarily against tenures. In the absence of information as to the conditions under which loans had been made, it was impossible to consider the merits of the Bill before the Council. The loans had, he presumed, been made to the poorest classes of the people,—to those who had been absolutely destitute, having no means whatever to support life or cultivate their land. Accepting that to have been the principle on which the loans had been made, it seemed to him somewhat questionable whether summary powers ought to be given to the Collector to levy from those ryots, who being destitute at the time they availed themselves of the Government advances, must necessarily be in straitened circumstances a few months hence. It must be conceded by the Council that all those to whom advances were made should, as soon as their circumstances admitted, be called upon to pay. But, on the other hand, the Government should not press their claims too rapidly. He thought, therefore, there should be some provision in the Bill, to the effect that when these men were not in a position to pay the whole at once, they should be allowed to pay by instalments, and their property should not be sold up in the summary way which appeared by the Bill to be contemplated.

THE HON'BLE MR. DAMPIER believed that it was out of order for the hon'ble member to speak after the member in charge of the Bill had made his final reply, but MR. DAMPIER had nothing to add to the remarks which he had already made.

The motion was then carried, and the Bill referred to a Select Committee, consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Schalch, the Hon'ble Baboo Digumber Mitter, and the Mover.

REGISTRATION OF JUTE WAREHOUSES.

THE HON'BLE MR. HOGG said that this Bill dealt with the law for the registration of jute warehouses, and also made provision for the establishment of an efficient fire-brigade. The attention of Government had been called to the necessity of some slight amendment in the law, owing to very strong representations received from the owners of jute warehouses, especially those residing in the suburbs, which were supported by the Suburban Municipal authorities and the Chamber of Commerce. Act II of 1872 of this Council imposed many very stringent provisions for bringing under efficient control jute warehouses. The provision of the law which was chiefly objected to was that found in Clause 1 of Section 7, which provided, amongst other things, that no jute should be combed or dried save within a building, the walls of which should be of burnt bricks, and so on. The memorialists represented that jute was often received in the warehouse in a damp, wet state, and to dry it, it was absolutely necessary that it should be exposed to the sun and air; that in jute warehouses, especially in the suburbs, there would be no danger if a relaxation of the restrictions in the existing law were granted by the Council. He was quite prepared to admit that there was much force in the arguments brought forward by jute warehouse proprietors and the Chamber of Commerce. However, in

dealing with a question of relaxation of the existing restrictions, the peculiar circumstances which called the Act into existence should be borne in mind. In 1871, in the very heart of Calcutta, there had been some disastrous fires, which caused great loss of property, and which also endangered all property in the neighbourhood. This caused universal alarm throughout Calcutta, and all the influential public bodies—the Chamber of Commerce, the British Indian Association, the Trades Association, and the Municipality—came forward and urged on the Government the absolute necessity of taking stringent measures for bringing under strict control the jute trade, which was then growing fast into importance. Urged by these authorities Act II of 1872 was passed, and the Council availed itself of the opportunity of providing for the establishment of an efficient fire-brigade. Fortunately, since the passing of that Act there had been no serious fires; but because we had been relieved for a time from the fear of fires, the cause which called the Act into existence should not be lost sight of; and the Council should bear in mind the very great risk which must necessarily follow the storage of jute within the town and suburbs. He thought the request made by the Chamber of Commerce and the jute warehouse proprietors might, in a measure, be conceded by relaxing the restrictions in regard to those jute warehouses which were situated away from crowded localities, but the law should not be relaxed in regard to warehouses which were situated in crowded localities in Calcutta or the suburbs. He proposed also, if permission were given to bring in a Bill, that we should deal with a few other points which seemed to require amendment. Recently certain decisions had been arrived at by some of the Magistrates in connection with Section 14 of the Act. That section provided that—

"Whoever, in contravention of the license, shall introduce or use in any jute warehouse, in which jute or cotton is kept or deposited, any fire or lucifer matches, or shall smoke therein, and whoever shall violate any of the conditions or restrictions under which the said license is granted, shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty Rupees for any one such offence."

Nearly all the Magistrates held that the penalty could be inflicted on the person or persons who were in responsible charge of the jute warehouse. Some Magistrates, however, and notably one who decided a case only a few weeks ago, held that the actual offender, that was to say, the coolie who deposited the fire, could alone be brought under the section. That seemed to him to be a narrow view of the law; but it was well to remove the possibility of a recurrence of such a decision by an amendment of the law. Again, there was another point which related specially to Calcutta, which demanded attention, and that was the prevalence of the practice of loading and unloading jute carts on the public roads. When licenses were granted for the establishment of jute warehouses, the proprietors should, he considered, be compelled to have arrangements within their own premises for loading and unloading. The Council were aware that the streets in the native portion of the town were very narrow; and when a string of forty or fifty carts were brought to a warehouse situated in that part of the town, the thoroughfare was completely blocked. This point, he thought, was worthy of consideration

when the Bill was brought before the Council. With these few remarks he begged to move for leave to bring in a Bill to amend Act II of 1872 of the Lieutenant-Governor of Bengal in Council (an Act to amend the law for the registration of jute warehouses and to provide for the establishment of an efficient fire-brigade).

The motion was agreed to.

IRRIGATION WATER-RATES.

THE HON'BLE MR. DAMPIER said the Council were aware that a project for canals in Orissa was undertaken first by a Company under a contract with the Secretary of State. A law was passed, Act VIII of 1867 of this Council, for the general working of irrigation and facilitating the recovery of water-rates, and the mechanism of the arrangement was that the Secretary of State was supposed to purchase from the Company all the water used for irrigation, and that the money due by those who used the water was due to the Secretary of State. The law made provisions such as these, making it legal to stop the supply of water if the persons who took the water failed to pay the rate due, prescribing penalties for the waste or theft of water, giving permission to the officers of the Company to enter upon any land in order to detect surreptitious irrigation, and so on. When the Company sold the irrigation works to Government, Act VI of 1869 of this Council was passed, which re-enacted the provisions of the former law and adapted them to the new state of things. It empowered the officers of Government to do the things which the officers of the Company were empowered to do under the former law. But from the preamble of the two Acts, it would be seen that they applied only to the supply of water in the districts and deltas of the rivers Mahanuddy, Byturny, and Brahmany, and their affluents, the rivers in Orissa. Irrigation works had, however, been opened with very great success in the district of Midnapore, and would be extended no doubt to other districts gradually. The existing law did not extend to Midnapore or other districts, nor was there given to the Government power to extend it. The object of the Bill he asked to introduce was simply to make the Orissa Irrigation Law applicable to other districts of Bengal to which the Lieutenant-Governor might think proper to extend it. Of the existing Acts, the second repealed certain sections of the first. He should propose to repeal both of those Acts, and to re-enact the whole law in one Act of a few sections, and such amendments as experience had shown to be necessary could be made at the same time. He had, therefore, now the honor to ask leave to bring in a Bill to provide for the recovery of rates for water supplied for purposes of irrigation in Midnapore and elsewhere.

The motion was agreed to

REALIZATION OF ARREARS IN GOVERNMENT ESTATES.

THE HON'BLE MR. DAMPIER said that to explain the object of the next motion on the List of Business, he must review the history of the law on this subject. Regulation VII of 1799 was, as the Council were aware, passed as the result of much tentative legislation. Several Regulations had been passed,

and were successively modified, and at last the law settled down into Regulation VII of 1799. The provisions of that Regulation, with which the Council were now concerned, remained in force for more than sixty years, until Act VII of 1868 of this Council made a change, which rendered this Bill necessary. Section 25 of Regulation VII of 1799 contained the law as it then stood:—

"When lands are attached by a Collector, or other officer of Government, under the present Regulation, or become subject to a khas collection on the part of Government under any Regulation authorizing the same, or by any means come under the immediate management of the officers of Government, so that the rents are collected by them from the ryots, jotedars, dependent talookdars, under-farmers, or other descriptions of under-tenants, the Collector, in addition to the power vested in him, and in the officers employed under him, by Section 19 and the preceding sections of this Regulation, is authorized, without any previous application to the Dewanny Adawlut, to proceed against defaulting under-renters, of whatever denomination, from whom arrears of rent may be due, and their sureties, in the same manner as he is authorized by Section 23 of this Regulation to proceed against sudder farmers paying revenue immediately to Government, and their sureties, if he shall consider this mode of procedure more likely to be effectual in causing payment of the arrear due from them: and in such cases he is authorized to issue the process directed in Section 5 of Regulation XIV, 1793, on the report of the tehsildar, or other officer employed to make the collections, as in cases of arrears due from proprietors or sudder farmers whose revenue may be made payable to a tehsildar, or the tehsildar or other collecting officer may, in particular cases, where he may have reason to apprehend the elopement of the defaulter or his surety, himself arrest and convey him to the Collector."

The effect of this section was that the Collector might proceed against ryots in the same way as he might proceed against farmers of revenue. Briefly, it meant that the Collector might attach his holding, arrest him, place him in the custody of peons if he showed any inclination to settle, then send him to the civil jail to be kept there until he paid the amount due; even a tehsildar might arrest a defaulter and send him in to the Collector. The point to which he wished to draw the attention of the Council was that ever since 1799 the law had given the Government the power of levying arrears from its tenants without previous application to the Civil Court. That law having been in force for upwards of sixty years, Act VII of 1868 was passed by this Council, and Section 29 of that Act repealed Section 25 of the old Regulation. It was evidently the object of the Act to substitute the certificate procedure for the old procedure of arrest and keeping under *pyadahs*, and so on. But in re-enacting the provisions of the law, Act VII of 1868 was so framed that ryots who did not possess transferable tenures slipped out of it; the old law was repealed as regards all tenants, whether holding tenures of a transferable nature or not, and powers of realization were only re-conferred as regards those tenants whose tenures were transferable. Under the interpretation clause, arrears due from "tenures" only were "demands" within the meaning of the Act, and the definition of "tenure" under the Act included only all interests in land other than estates which, by the terms of the grants creating the same, or by the custom of the country, were transferable; so that the Act in no way applied to arrears due from tenants who had not a transferable right in their tenures. It was obviously inconsistent that the lower degree of tenants should be more protected in respect of the realization of the demands of Government than

those tenants who held the right of transfer. Therefore, in proposing this Bill, MR. DAMPIER only asked that the Government be restored to the possession of the power, exercised by it for nearly seventy years, of recovering arrears due to it from tenants who had no right of transfer, without going through the forms of a civil suit. The want of this power was much felt, because of late the policy of the Government had been to keep large estates under the management of the Government officers, instead of farming them out in blocks, and he thought that policy had met with success.

He had already that day described the certificate procedure, and would say no more than to ask leave to bring in a Bill for the realization of arrears of rent due from ryots other than tenure-holders in Government estates, by declaring such arrears to be demands within the meaning of Act VII of 1868 of the Lieutenant-Governor of Bengal in Council.

The motion was agreed to

CALCUTTA MUNICIPALITY.

THE HONBLE MR. HOGG said the present municipal law of Calcutta was created under the provisions of Act VI of 1863 of this Council. This Act had been in work for over nine years, and on the whole it had worked satisfactorily. By it the Chairman of the Justices had the executive control of the municipal affairs of the town, and he had associated with him an influential body of European and Native gentlemen to assist him in the discharge of his duties. In the working of the Act during the last nine years many defects had from time to time been found to exist in the law, which had been amended by special legislation. Consequently we had now fourteen Acts by which the municipal government of the town was regulated. The Acts referred to were now in some instances difficult to interpret, and the provisions of all the Acts were not quite consistent; and it was thus difficult for the public to understand the rules and laws by which the Municipality were guided. It was now proposed to consolidate the Municipal Acts into one, and to take this opportunity to make some slight amendments which the practical working of the law had proved to be necessary.

The most important amendment required was one in connection with the water-supply, as the law now imposed obligations on the Justices which, under existing circumstances, they could not carry out. The water-supply works were designed for the supply of six million gallons daily, but unfortunately that quantity was not found to be nearly sufficient; the consequence was that, as the demand for water was in excess of the supply, the Justices were unable to keep up the pressure on their mains required by the Act, viz. a pressure sufficient to deliver water throughout the town at a height of fifty feet from 5 A.M. to 8 P.M. daily.

As the consumption of water was greatly increased, owing to defective fittings and careless waste, a great saving in water would be effected by relieving the Justices of the obligation of maintaining high pressure on their mains during the whole day, and he thought that this might be done without causing much inconvenience to the public.

However, he merely threw this out as a suggestion, as some other remedy might be found.

Besides the water-supply question, other amendments of a trivial character would be proposed, with the details of which he need not now trouble the Council. With these remarks he asked leave to bring in a Bill to consolidate and amend all the Calcutta Municipal Acts.

The motion was agreed to.

POSSESSORY TITLES IN LANDED ESTATES.

THE HON'BLE MR. DAMPIER moved for leave to bring in a Bill to provide for the compulsory registration of possessory titles in landed estates. In doing so, he said that the obligation on zemindars and proprietors of estates to register their names in the Revenue Office was nearly as old as the Regulations themselves. Regulation XLVIII of 1793 and the other Regulations quoted in Regulation VIII of 1800, as well as Regulation VIII of 1800 itself, prescribed that the Collector should keep up registers of landed proprietors. Section 21 of the last-named Regulation more distinctly imposed the obligation on the zemindars of reporting their succession. The section ran as follows:—

"The Collectors may be regularly informed of all future changes in the property of malguzary estates or lakheraj tenures within their respective zillahs for the purpose of entering the same in the prescribed registers. All persons succeeding to the property of any malguzary estate or lakheraj tenure, whether by inheritance, purchase, gift, or otherwise, are required to notify such succession, immediately after the same may have taken place, to the Collector of the zillah in which the estate or tenure succeeded to may be situated, and to furnish such information as may be necessary to enable the Collector to make the prescribed entries in the public registers."

The obligation to report to the Collector was to be enforced by such fine as might be imposed by order of the Governor-General in Council on a report of all the circumstances of the case being submitted to him.

It would be seen that this was a cumbrous procedure even in those days, when the chain of authorities between the Collector and the Governor-General in Council did not consist of so many links as now existed. Before the Collector could enforce registration or inflict any penalty, the whole of the details of the case had to be sent up to the Governor-General in Council. In 1837 the Board of Revenue represented that the provisions of the law were very laxly acted upon by the Collectors on the one hand and the zemindars on the other. The Collectors allowed *dakhil-kharij* cases to hang on their files, and such zemindars only as chose to do so reported their succession to the Collector. The Board recommended that this cumbrous mode of enforcing the penalty should be done away with; that the application should be enforced first by a summary fine to be imposed by the Collector, and, secondly, by imposing upon proprietors who had not registered their names the disability to recover rents by any legal process. The Government of India did not altogether agree in the appropriateness of the second of these measures, the imposition of the disability he had mentioned, and there the subject rested till 1852. The question was then again raised, and officers were consulted throughout the country. The opinions they gave contained almost every possible variety of view as to the necessity of

enforcing registration, the best mode of doing it, the amount of vexation and harassment which such a measure would entail, and as to the penalty by which it should be enforced The Board were unanimous as to the benefits that would ensue from registration. But one member of the Board, Mr. Gordon, held that good as the result might be, they were not worth the vexation, trouble, and discontent which any such measure would cause. Mr. Ricketts and Mr. Currie, on the other hand, considered that the harassment and vexation were overrated, and that the advantages would very far outweigh the disadvantages of the proposed measures, and they submitted a draft Bill to provide for compulsory registration. But that was a very ambitious draft, one of its objects being to give greater security to titles. It went up to the Legislative Council of the Government of India, and there the measure was shelved, owing mainly to objections recorded by Sir Barnes Peacock. MR. DAMPIER would read to the Council a portion of that gentleman's Minute, and he begged them particularly to observe that the objections did not apply to the measure he was now asking leave to introduce. Sir Barnes Peacock wrote:—

"I do not thoroughly understand upon what grounds the majority of the Board of Revenue, Mr. Ricketts and Mr Edward Currie, recommend the passing of the proposed Act for the registration of mutations, but I collect that they intend it to be a registration of rights, and not merely of the persons in lawful possession."

Here MR. DAMPIER begged to point out this radical difference between that measure and the one he was about to introduce. The Minute went on:—

"It is stated in the letter from the Secretary to the Board of Revenue of the 20th April 1852, that the Board are unanimously of opinion that the introduction of a correct system of registry would be attended with the best and most satisfactory results; and the Board observed 'that by rendering land a surer investment for money, it could not fail to give rise to an immediate increase in the value of landed property; it would for the same reason decrease the usurious interest at present demanded for money advanced upon land; it would facilitate, and in consequence diminish, the cost of obtaining sureties; it would tend to decrease litigation; and whilst for all these reasons it would not prove otherwise than acceptable to every honest, well-intentioned landed proprietor if unattended with undue inconvenience and expense, it would also be of assistance to Government in the administration of all matters connected with the fiscal, judicial, and police arrangements of the country.' If it is intended that the registration shall be a registration of rights, it appears to me that the system proposed will entirely fail in its objects.

"If it is intended that any reliance shall be placed in the register by persons about to purchase land or to lend money upon the security thereof (and unless the register is to be so used I do not see how it can render land a surer investment for money), I think it will be worse than useless, as it will frequently record persons to be the owners of rights which do not belong to them, and may thus be made an instrument of fraud."

MR. DAMPIER would again repeat that he had read this portion of the Minute for the purpose of showing the Council that the objections which led to the project of 1852 being set aside did not apply to the measure which he was asking leave to introduce.

Then, in 1854, Mr. Sconce, Judge of Chittagong, irrespective of anything which had gone before, came up of his own motion, and asked the Government to pass an Act for the registration of the names of landed proprietors, and it seemed to MR. DAMPIER that this draft should form the best model for the one

which he proposed to introduce. Again, the subject was dropped until 1872, when the Board of Revenue, now represented by Mr. Schalch, again strongly pressed the necessity of passing such a Bill. His Honor the President read extracts from this letter at the last meeting of the Council, but Mr. Dampier would run over them again:—

"The Member in charge called on the several Commissioners to report whether or not the requirements of that section, as well as of Section 21 of the same Regulation (regarding notices of succession to estates), were generally observed; and from the replies to this call it would appear that the practice enjoined by both sections has in the case of the first altogether ceased, and in that of the latter is only observed whenever it may suit the parties to obey the law, and that the penalty for disobedience prescribed by the law is never inflicted."

Mr. Dampier had omitted to say that on Mr. Sconce's draft the Board, on being consulted, held a different opinion. They said that no doubt strong reasons had existed for such a measure, while the law required that revenue due to Government from landed proprietors should be levied by process against the person, but that the reasons had lost much of their weight since the law had been altered so as to provide that such arrears should be realized by sale of the estate, without reference to the proprietors as individuals. Mr. Schalch, however, had now written as follows:—

"Since that period the legislature of Bengal has imposed many new duties of importance on zemindars, and obedience to the law is, in most instances, to be enforced by pecuniary penalties, the levy of which is dependent on a knowledge of the persons in actual possession of the estates in question and responsible for the discharge of the duties imposed upon them. Under former laws similar penalties being recoverable by the sale of the estates themselves, it was a matter of comparatively little importance to know the person in possession; but since the passing of Act VII (B C) of 1868, such penalties, even when recoverable as arrears of revenue, can be levied only by the process of certificates having the force of decrees of the civil court for money, and consequently when the person in possession of the estate to which the discharge of the duties imposed by law attaches is not known, the recovery of the penalty becomes certainly a matter of great difficulty, and in most instances practically an impossibility.

"Under these circumstances, it appears to the Member in charge that it has now become absolutely necessary to enforce a registration of the names of the parties in *possession* of estates, in view to their being held the parties responsible for the discharge of the various duties which the law imposes on them as proprietors; and the Member in charge is of opinion that an endeavour should be made to devise a practical scheme for the purpose."

As to Sir Barnes Peacock's objection, Mr. Schalch said—

"But such objections could not, the Member in charge thinks, be urged against a law the object of which would be solely to determine summarily the question of possession, in view to fix the responsibility of persons holding actual possession of estates for the discharge of certain duties imposed upon them by the existing law, which would leave such decisions open to the final determination of the civil courts, and would in no way interfere with the existing law in regard to the prosecution and decision of all questions of right and title in the civil courts."

The Government had now very carefully considered this subject, and had come to the determination that a law of this kind was required, and that the Council should be asked to pass the measure. The Council were aware of the difficulties and vexations to which the ryots were exposed where they had to

pay rent to a number of joint shareholders in estates. The Government had very carefully considered whether it would be desirable to enact that every proprietor should not only register his succession to possession, but also the share to which he had succeeded. On mature deliberation, the Lieutenant-Governor had come to the conclusion that this could not be done. It was hoped that another measure, to be presented to the Council hereafter, would provide that relief to the ryots which would have been afforded by the registration of shares. In some cases it would be very difficult, even if it would be possible, to register succession with specification of shares; for instance, some places in which the *Mitakshara* law was in force.

The existing law already provided the procedure which would fit into the measure which was now proposed. Act XIX of 1841 provided that whenever a person might leave "property, movable or immovable, it shall be lawful for any person claiming a right by succession thereto, or any portion thereof, to make application to the Judge of the court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended."

The Judge was then to determine summarily the question of possession subject to a regular suit. The Act gave the Judge power to make arrangements for preventing waste of the property pending the decision of the suit, either by taking security from the party in possession, or by appointing a Curator, who might be the Collector. Section 18 of the same Act provided that the decision of the Judge upon the summary suit under the Act should have no other effect than that of settling the actual possession, but that for this purpose it should be final, and not subject to any appeal or order for review. If the measure MR. DAMPIER proposed were to vest the Collector with jurisdiction to decide summarily the question of *right to succeed* to an estate under any circumstances, as some of the draft Bills which had been proposed were intended to provide, it would be necessary to bar the jurisdiction of the Judge under Act XIX of 1841; for it would never do to have the Moonsif trying summarily a question of right which the Collector had just decided summarily; the Moonsif's decision again being followed by a regular suit to reverse his decision. MR. DAMPIER proposed to follow the model of Mr. Sconce's draft of 1854. That draft was in this wise.—Application was to be made to the Collector by any person claiming to have succeeded. If there was no opposition, the Collector, after giving due notice, would admit the applicant to registration. If his succession was contested, the Collector would try whether either party was actually in lawful possession on a colour of right, and, if so, the Collector would register accordingly. If he should find that neither party was in such possession, he would not make any registration, but (instead of simply throwing out the application for registration, as was now the practice,) he would certify to the Civil Court that such a case of disputed or uncertain succession had come to light, and would call upon that Court to try the case under Act XIX of 1841; whereupon the Judge would be bound to proceed exactly as if an application had been made to him by one of the parties under Section 1 of Act XIX of 1841. To provide against waste during the pendency of the suit, MR DAMPIER would

authorize the Collector to exercise all the powers with which the Act vested the Judge in that behalf. To put it briefly, the Collector would decide the question of possession if no opposition was made good. If it were otherwise, he would still carry out the law for keeping his register correct as far as lay in his power. Instead of merely refusing to comply with the application for registry and leaving it to the parties to settle the matter as they might think best, he would say:—"I cannot decide this case on possession, and I call on the Civil Court to decide it by the summary procedure which the law has provided for the summary trial of questions of right." That was the scheme of the measure as far as it had already been sketched out, and he hoped that the Council would allow him to introduce the Bill.

The motion was agreed to.

INSPECTION OF STEAM-BOILERS AND PRIME-MOVERS.

The Hon'ble Mr. Hogg said that steam-boilers and prime-movers, working in Calcutta and the suburbs of the town, were now brought under inspection by Act VI of 1864 of this Council. It was found from experience that the use of steam machinery was greatly on the increase, and that native proprietors employed coolies unacquainted with the working of machinery to take charge of them. This matter had been brought to the attention of Government some time back, and they consulted the leading bodies and individual proprietors of steam machinery as to the expedience of amending the law so as to empower the Lieutenant-Governor to pass such rules as it might think fit for testing the qualification of the persons to be placed in charge of steam-boilers. The preponderance of opinion was very much in favour of amending the Act. In fact all the European firms and persons, and also the public bodies consulted, were of opinion that some such measure as was proposed was urgently required. The Native gentlemen consulted, however, did not seem to admit the necessity of the proposed legislation; they urged that now that the use of steam machinery was so much on the increase, it was inexpedient to restrict the use of it by calling upon the proprietors of such machinery to put qualified Engineers in charge; they urged that immediately an examination was required there would be a considerable rise in the wages of the managers of engines. Mr Hogg concurred with the Native gentlemen in question, that it was not at all expedient that we should impose an unnecessarily stringent examination. But he could not admit that because the use of steam machinery was greatly on the increase, therefore legislation should not be resorted to in order to protect life and property in the town and suburbs of Calcutta. It was not intended, he was sure, that the test should be high, but that the Inspector of steam-boilers should be bound to ascertain that the person to be placed in charge should have practical experience of the management of steam machinery. Such a test was not only desirable, but absolutely necessary, when the use of steam was resorted to in so large and important a city as Calcutta. He should therefore ask for leave to bring in a Bill to amend Act VI of 1864 of the Lieutenant-Governor of Bengal in Council (an Act to provide for the periodical inspection of steam-boilers and prime-movers attached thereto

in the town and suburbs of Calcutta), with the view of enabling the Lieutenant-Governor to pass such rules as he thought fit for testing the qualification of persons to be placed in charge of steam-boilers, and to prevent unqualified persons being so placed in charge.

The motion was agreed to.

SURVEYS AND BOUNDARY MARKS.

The HON'BLE MR. DAMPIER said that before touching upon the next motion which stood in his name, he might be allowed to give a little relief to the strain which he had put on the patience of the Council by saying that he would not proceed on that day with the last of the measures on the list regarding the law of Butwarrah, and therefore the present was the last Bill with regard to which he should have to ask their attention. He asked leave to bring in a Bill to provide for the execution of surveys and for the erection of boundary marks. The Council were aware that the revenue survey of the districts of Lower Bengal had been completed; but the survey of the districts of Hooghly and Midnapore had been condemned. Hooghly had since been resurveyed; of Midnapore about half had been surveyed and half remained to be done. By the revenue survey of Bengal, in all save a few exceptional districts every acre of land had been assigned to the revenue-paying estate or lakhiraj tenure to which it appertained; every village boundary had been demarcated, some being settled after elaborate inquiries. The results had been carefully and scientifically recorded in registers and maps. Unfortunately there had been one omission, which went very far to detract from the benefits of the survey. The boundary lines, after having been demarcated, after having been settled judicially, had not been marked on the ground by any permanent pillars, and the result was that the boundaries could not afterwards be identified with any certainty. The officers of the professional branch of the survey had persistently and consistently urged on the Government what advantages were being lost by not securing the boundaries by permanent marks as soon as they were surveyed. Colonel Thuillier had said:—

"It is most difficult, if not altogether impossible, for any one, either professional or civil, to identify and trace out boundaries on the ground from the old maps, or to settle disputes, with any degree of certainty where there are no natural boundaries."

The Council would understand that the difficulty consisted in re-laying on the field from the map any given boundary line or point which had once been laid on the field, and then represented on the map. If no marks for identification were left on the ground, it was most difficult to recover the exact boundary with the help of the map only at a future time. Sir William Grey had written in 1868:—

"The Lieutenant-Governor was aware that many cases had occurred in which Revenue officers had found considerable difficulty in identifying on the ground the tri-junction points shown on the map, and that occasionally this was the subject of obstinate dispute. While considering it unnecessary to go to the expense of erecting pillars or platforms as a matter of course at every bend of a boundary, or at every tri-junction point, he thinks that a certain

number of such marks would be advantageous. Colonel Thuillier advocated even a few pillars in each district to serve as leading points of departure in any investigation."

The Council were aware that where one point even was precisely identified, the professional surveyor would be able without difficulty to lay down the boundary from that starting point. The letter of the Government of Bengal went on to say:—

"And this view was also held by Colonel Dickens in paragraph 27 of his report on the reorganization of the Survey Department, where he wrote:—'It is not necessary to have the points of tri-section of boundaries marked by permanent pillars or platforms; but a sufficient number should be constructed in all cases in which these cannot be easily fixed by reference to existing permanent buildings.'

"With advertence to these views the Lieutenant-Governor recommends that in future surveys permanent boundary marks be constructed at selected tri-junction points of villages, and that the selection of these points should be left entirely to the discretion of the professional revenue surveyor."

The Government of India at once accepted this view, and not only accepted it, but had very urgently pressed it on the Government of Bengal.

It was obvious that the landed interest was the one which benefited directly by the survey and demarcation. Accordingly in every other part of India the cost of erecting and maintaining boundary marks was thrown upon the land. In 1869 the Government of India wrote:—

"The reports furnished by the Local Governments and Administrations shew that Lower Bengal is the only province in which no measures have been taken for securing the permanent marking of village boundaries; everywhere else masonry platforms or pillars are built to mark triple junctions or disputed boundaries, and the work both of erecting and maintaining them is carried out at the expense of the landholder."

Thus more than six years ago the Governor-General in Council, in concurrence with Sir William Grey, urged the introduction of such a Bill as was now proposed. Different circumstances led to its postponement from time to time, but the soundness of the principle had not during that time been called in question. Sir George Campbell held a strong opinion on the waste of power and expense which had occurred through not securing boundary marks. The last postponement of the measure was on account of the famine; and now a letter, as His Honor told the Council at the last meeting, had been received from the Government of India declaring that the Governor-General in Council had most decidedly made up his mind to the adoption, in future operations in Bengal, of the same system which prevailed in all the other provinces, and that the interest which benefited by the measure, and not the general tax-payer, should pay for it.

Sir William Grey wrote in the same letter—

"But if the boundary marks be erected on the principle now proposed, it is evident that they would be for the general benefit of all landholders in the neighbourhood; it would not be equitable to charge the cost of erecting each platform entirely to the zemindar or zemindars between whose villages it might chance to be erected. The fairest arrangement would probably be to pass a law authorizing the Collector to erect such marks as may be considered necessary, and to call on the landholders to erect them if necessary, or to assist in erecting them, in the first instance at the cost of Government: the aggregate cost incurred in constructing all the marks of one season being made recoverable as an arrear of revenue from

all the landholders whose lands are included within the operations of the season, in proportion, perhaps, to area. Some similar arrangement may be made for the preservation of the marks after their first construction. The details will be best considered when the Bill is introduced."

The Government now proposed to spread the incidence of the cost over more interests even than Sir William Grey did; it proposed that the owners of land, and those having beneficial interests in land, the holders of all tenures (exclusive of the ryots who had only rights of occupancy), should contribute to the cost of those works from which they would derive benefit. MR. DAMPIER would read to the Council two sections of the Madras law which he proposed to follow. Much must be left to the Select Committee to decide; but roughly speaking he thought the Council might go on the lines he had described. Section 2 of the Madras law provided—

"It shall be lawful, within the said Presidency, for a Collector of land revenue, or person exercising the powers of Collector, or for any Revenue Settlement Officer, and also for any other officer appointed by the Government for the purpose, whenever he may be of opinion that such demarcation is necessary for the prevention or adjustment of disputes (or for conducting and perpetuating a survey or a settlement of land revenue), to fix the boundaries of fields, holdings, estates, or villages, and to require the owner or occupant of the field, holding, or estate, or the headman (by whatever name designated) of the village, to clear the boundary line where overgrown with jungle, and also to set up, form, and maintain boundary marks of such materials, and in such number and manner as may be determined by such officer under the direction of the Board of Revenue, or of the Director of the Revenue Settlement, as the case may be, to be sufficient to distinguish the limits of the field, holding, estate, or village."

Section 6 of the same law was as follows:—

"In default of the owners or occupants of the fields, holdings, estates, or villages complying with such requisition, the officer may give directions for the erection and repair of the necessary boundary marks, the cost of which shall be equitably apportioned on the fields, holdings, estates, or villages which they serve to distinguish, and shall be charged to the persons possessing a right of ownership or occupancy in such fields, holdings, estates, or villages, in such manner as such officer aforesaid may consider just, and shall be levied in the same manner as arrears of land revenue."

That was the scheme of the Bill which MR. DAMPIER proposed to introduce into this Council.

He would remind the Council that although the Bill would enact principles of general application, its operation would be extremely limited in Bengal.

The Government had scouted the idea of going over the old ground which had been already surveyed. It was to be regretted that boundary marks had not been put at the time, but it would be altogether out of the question to go over the districts again for the purpose of erecting them.

In all future surveys, however, advantage would be taken of the provisions which it was now proposed to enact; but these surveys, as far as was now contemplated, would be very local, and for special purposes only; certainly so in the permanently settled tracts. For instance, about half of Midnapore remained to be done. The Government of India had agreed to advance the money for the erection of pillars there, to be recovered after the Bill had been passed. Then the survey of the Dearahs or alluvial lands of the Ganges below Kooshtea was going on, in the course of which boundary marks should certainly

be permanently fixed on the edge of the mainland which was safe from the action of the rivers; and these would serve in future as starting points for re-laying the boundaries on the Dearahs which were liable to be washed over.

Then, it was proposed to undertake the survey of the large Government estate of Khoorda, in the temporarily settled district of Pooree, in anticipation of the resettlement, which would be due four or five years hence; and pillars would be put up there. Where the Government was landlord, it should have its share of the expense, as well as the tenure-holders.

The opportunity of this Bill would be taken to declare the rights of Government to order a survey to be made. The law was somewhat hazy on that subject, and surveys had hitherto been made under the authority conveyed by the settlement law, as if the survey operations were part and parcel of a settlement; but in permanently settled estates, at any rate, that law could not be applicable. It was therefore proposed to enact specifically that the Government should have the power to order a survey wherever it thought necessary. With these remarks, he moved for leave to bring in a Bill to provide for the execution of surveys and for the erection of boundary marks.

The motion was put and agreed to.

PARTITION OF ESTATES.

The Hon'ble MR. DAMPIER postponed the motion for leave to bring in a Bill for the repeal of Regulation XIX of 1814 (a Regulation for reducing to one Regulation, with alterations and additions, certain Regulations respecting the partition of estates paying revenue to Government), and to make better provision for the partition of estates paying revenue to Government.

The Council was adjourned to Saturday, the 9th January 1875.

Saturday, the 9th January 1875.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble V. H. SCHALCH,
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble RIVERS THOMPSON,
The Hon'ble H. L. DAMPIER,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble BABOO JUGGADANUND MOOKERJEE,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble F. G. ELDRIDGE,
and
The Hon'ble KRISTO DAS PAL.

REALIZATION OF ARREARS IN GOVERNMENT ESTATES.

The HON'BLE MR. DAMPIER moved that the Bill for the realization of arrears in Government estates be read in Council. He said that at the last meeting of

the Council he had the honor to ask permission to introduce this Bill. The Bill had since been prepared, and had been the proper number of days in the hands of hon'ble members. He therefore now moved that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristo Das Pal, and the Mover.

PARTITION OF ESTATES.

The HON'BLE MR. DAMPIER moved for leave to bring in a Bill for the repeal of Regulation XIX of 1814 (a Regulation for reducing to one Regulation, with alterations and additions, certain Regulations respecting the partition of estates paying revenue to Government). In doing so, he said he was obliged to take the Council back to the legislation of 1793. Hon'ble members were aware that the permanent settlement was concluded for very large estates or tracts of land. Whole pergunnahs, consisting of what were then called several mehals, were included under one engagement for the payment of a certain amount of revenue, and all the lands so included were jointly liable for the due payment of that item of revenue. In order to give the greatest possible value to the property which had been so arranged, the legislators of the day provided every possible facility for those who were jointly responsible, and whose property was jointly responsible with that of others, to separate their interests and their liability. That might be called the first butwarrah legislation. The joint interests which were liable for the same item of Government revenue might be roughly divided as of two classes. In the first class were coparceners in an entire estate, who held the whole on joint tenancy with others; who had a certain interest in every field and in every clod of earth throughout that estate. They were known as ijmali shareholders. The second class consisted of persons who were in possession of certain specific villages or mehals which represented their interest in the common estate. As regards coparceners whose interests were represented by specific lands, the Regulations of 1793 provided that they might apply to have their interests and liabilities separated by the apportionment on the specific land belonging to them of a specific amount of the common jumma. With regard to the ijmali shareholder, who was a common tenant of the whole area of the estate, the Regulations provided something more. He might insist on a certain quantity of land being separated from the rest as representing his interest in the estate, and then on a proportionate amount of the common jumma being settled upon the lands which were in future to constitute his sole estate. The Regulations contemplated and encouraged this separation of interests being made by the parties themselves. But whereas the Government revenue was at stake, it was provided from the first that they should do nothing which jeopardized that revenue in any way; and every partition which they proposed to make had to be considered and approved by the revenue authorities. *The* one great principle then laid down, and in full force up to this day, was this, that whenever any land which had up to that time been jointly responsible with other land for one item of the land revenue was separated and formed into a

separate estate having its own responsibility for a certain portion only of that revenue, the jumma should be proportioned according to this rule, viz. the portion of the jumma which was settled on each portion of the property into which the original estate was divided should bear the same proportion to the actual produce of the land as the entire joint jumma had borne to the actual produce of the entire lands which were originally contained in the whole estate. That rule was a perfectly sound one, and had existed in full force up to the present day.

The privilege of obtaining such separation of interests in the land as MR. DAMPIER had described was extended to those who became owners of portions of estates which were sold by the Government for realization of arrears of revenue; for in those days if an estate fell into arrear, the whole of it was not sold, but only such portion as was necessary to make good the arrear. The privilege was also extended to portions of estates transferred under decrees of the Civil Court by sale or other process; but this provision was subsequently, in 1846 he thought, repealed. Thirdly, the privilege was extended to all proprietors who, by private arrangement, bought shares of estates. Regulation VIII of 1793 again recognized the right of the sharer to apply for separation; Regulation XXV (all these Regulations were passed on the same date) laid down rules for carrying that out; Regulation XV of 1797 prescribed the rate of fee to be levied by the Collector in apportioning the jumma, to be a quarter per cent. on the annual revenue. Then came Regulation VI of 1807. He would ask hon'ble members to observe here that the security of the Government interest throughout was considered paramount. Before any other question was the question of the Government revenue. Here was the preamble of the Regulation:—

"Whereas under the provisions contained in Regulations I and XXV of 1793, persons holding shares of estates paying revenue to Government are entitled to a separation of such shares; and on the completion of the butwarrah by the officers of Government, and on the confirmation of it by the Governor-General in Council, to hold the same as distinct mehals, subject to the just proportion of the public assessment: and whereas considerable loss and inconvenience have been experienced in the collection of the public revenue from the too minute subdivision of landed property," it was enacted that estates might be divided down to a jumma of five hundred rupees.

The restriction did not long remain in force however. Regulation V of 1810 did away with it, and allowed partitions to be made of the very smallest estates. The preamble of that Regulation ran thus:—

"Experience having shown that the existing rules for the division of landed property paying revenue to Government are in many respects defective, inasmuch as they do not sufficiently provide against the artificial delays and impediments which are frequently thrown in the way of the process of the division by some one or more of the parties concerned, who may be interested in so doing, or (as often happens) by the officer employed in conducting the details of that process; nor effectually secure Government from the loss resulting from fraudulent and collusive allotments of the public revenue on the shares of estates when divided; and there being moreover reason to believe that the restriction which has been laid on the partition of small estates by Regulation VI of 1807 has been, and is, the cause of considerable injury to numbers of individual sharers in such estates, thereby inducing a sacrifice of private rights, which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify

or require: with a view therefore to remedy these defects, to expedite the division of landed property paying revenue to Government, when duly authorized by the provisions of Regulations I and XXV of 1793, and their corresponding regulations for Benares, and for the ceded and conquered provinces; with due regard to the permanent security of the public revenue, whatever be the amount thereof; and to obviate the injury to which individual sharers are liable in the case of a joint estate being brought to sale for balances which may have arisen from the default of their coparceners during the interval while the process of division is pending, the following rules have been enacted"

So that by this Regulation there was no limit to the minuteness of the estate which might be subdivided into a number of other estates; and this Regulation also provided certain provisions to protect the share of the applicant from sale in the case of other sharers falling into arrears during the course of the butwarrah.

Up to 1811 provision had been made to protect the Government revenue from the effects of fraud and error, the provision being that if within three years after the conclusion of the partition fraud or material error was discovered affecting the Government revenue, the Governor-General in Council might annul the proceedings and order the reallotment of the jumma on the two estates, apportioning the jumma for which each portion should be liable in accordance with the relative proportion borne by its produce. Subsequently it was found that the period of three years was not enough to bring to light these cases of fraud and error; and therefore, by Regulation XI of 1811, the period was extended to ten years, and that was the law still. The next Regulation was XIX of 1814, which it was now proposed to repeal. The preamble of that Regulation said:—

"Whereas difficulty has, in many instances, been experienced in providing fit persons to undertake the partition of estates paying revenue to Government, from the inadequacy of the remuneration prescribed in Regulation V. 1810, in some cases – particularly in instances when measurement of the land becomes necessary; and whereas it has been deemed expedient to make provision for defraying the expense attendant on such measurement, and for augmenting the remuneration to the ameen appointed to make the partition, in cases where the Board of Revenue or Board of Commissioners may consider such augmentation equitable; and whereas it will tend to the public convenience to reduce to one Regulation certain Regulations at present in force respecting the partition of estates paying revenue to Government, the following rules have been enacted"

Mr. Dampier would, shortly as he could, lay before the Council the main provisions of that law, because it would be understood that it was not proposed to ask the Council to upset the general scheme upon which butwarrahs were effected under that law, but to make modifications and improvements in it, and therefore it was necessary that hon'ble members should have before them an account of the existing scheme. Regulation XIX of 1814 then provided that the Collector was to superintend the partition and to apportion the jumma, the parties to the partition paying the expense; that any proprietor was entitled to separation if no objection was made by the other proprietors to the effect that the interest of which the applicant declared himself to be possessed was greater than that to which he was entitled. But if any such objections were made, the partition could not proceed until the applicant had

made good in the Civil Courts his claim to the interest which he professed to possess. Under this Regulation two estates once separated might be united again into one. The lands assigned to the separated estates into which the parent estate was to be divided were to be as compact as was possible with reference to their circumstances and the general fairness of the division. The public revenue was to be assessed according to the principles of the Regulations of 1793. Every local circumstance affecting the value of the land was to be taken into consideration, such as the advantages derived from embankments, reservoirs, &c.

The dwelling-house of each sharer was to remain in his possession. If it fell within the estate of another shareholder, it was still to remain in the possession of the original occupant, who, with regard to it, would be in the position of a tenant to the zemindar within whose estate it might fall in the division. Rules were made as to the benefits to be enjoyed from water-courses, embankments, &c., by each of the newly-formed estates. The Collector was to appoint a creditable ameen to make the partition. Fees fixed at a certain percentage of the jumma were assigned to him by this law; but the remuneration was found to be insufficient, and subsequently the revenue authorities were allowed to fix the ameen's fees at their discretion.

The Collector was to impose a daily fine on any proprietor who tried to cause delay by throwing impediments in the way of the partition. The Collector was to give copies of the partition papers to each of the sharers in the estate. If all the sharers agreed to the partition, and no objection was made, he was to place the parties in possession and report his proceedings to the superior authorities. If any objection was made, the Collector was not to put the applicant in possession, but to send the papers to the Board of Revenue, whose decision was final. Division of estates and mehals might be made amicably or by means of arbitration; but the Collector was to satisfy himself that the allotment of the jumma was fair and safe as regards the Government revenue, just in the same way as he had to satisfy himself as to the proposals made by an ameen. Where an estate was divided into two equal shares, the division having taken place, lots were to be drawn by the parties to decide which share should belong to which proprietor. Then came the provision that within ten years after partition the Governor-General in Council, in case of the discovery of fraud or material error, might annul the allotment of jumma, but not the partition of lands. The Governor-General in Council could not interfere with the partition of the land, but only, in the interests of the Government, with the amount of jumma assessed on the respective portions into which the estate had been divided. The joint proprietors were to be held jointly answerable for the entire revenue of the parent estate until each was put in possession of his separate share; but with this modification, that as soon as an estate was declared by the Collector to be under butwarrah, a separate account was opened for the applicant's share, and payments of revenue made on account of that share were separately entered. In the event of the other sharers falling into arrear, the estate would be sold, saving the applicant's share. But one very important question regarding the construction

of the law had arisen here. The law did not say whether, in the event of the defaulting sharer's share not realizing the full amount of the revenue due, the applicant's share should then be liable to sale or not. That was a very important point.

After Regulation XIX of 1814 came Act XX of 1836. It was found that there was no provision of law authorizing the Collector under any circumstances, after once an estate had been declared under butwarrah, to strike the butwarrah case off his register, even if the parties agreed to this course. Therefore Act XX of 1836 enacted that while a butwarrah was in progress, the Board of Revenue might give six months' notice of their intention to quash a butwarrah. If no objections were made by any party during that time, the Board might direct the butwarrah to be quashed, and then all things would thereafter go back to the *status in quo ante*, to the joint liability of all the shares for the entire joint jumma of the estate.

Such was the present state of the law, and under it a large number of butwarrahs had been made, especially in Tirhoot and Cuttack. In Tirhoot Mr. Dampier believed that not less than three thousand butwarrahs had been effected within the last eleven years. So long ago as 1848 the defects in the law and the difficulties experienced in carrying it out were prominently brought to notice by Mr. Alexander Forbes, the then Collector of Rajshahye. Inquiries were then made, and from that time to this it had been admitted that amendments in the law were much required both for the purpose of devising remedies and the determination of certain important points which the present law left in doubt. Since Mr. Forbes wrote, there had been great changes in the law. He wanted to do away with butwarrahs unless made by the proprietors themselves, and he wished to provide security to each proprietor against the default of his co-sharers by opening a separate account independently of the question of partition of land. Hon'ble members were aware that this proposal had been absolutely carried out by Act XI of 1859. Independently of any question of dividing the land, any proprietor might now ask the Collector to keep the account of his share separately from that of the other sharers in the estate; and after such separate accounts had been opened, if the revenue due from the estate was not paid up, that share only which was in arrear would be made primarily liable and sold. The shares not in arrear would not be sold unless the amount realized by the sale of the defaulting share was insufficient to clear off the arrear due. It was supposed that when Act XI of 1859 came into force, the number of partitions would fall off, as that Act would give shareholders the protection which they required against the default of their coparceners; but broadly speaking the expected result had not ensued, and it appeared that, especially in districts in which butwarrahs had been in vogue, the shareholders sought to have their lands distinctly told off to them and themselves freed from all connection with, and interference from, their more powerful coparceners. Thus it was found necessary to keep up the system of the butwarrah law, and it having been decided to keep it up, the Government had, after many years of discussion, resolved, if possible, to make such amendments in the law as experience

had shown to be necessary. In 1852 the Board of Revenue, after receiving reports from the Commissioners consulted upon Mr. Forbes' letter, submitted a draft of an Act. The legislation for Bengal was then in the hands of the Legislative Council of the Governor-General.

Not only in Lower Bengal had the necessity for amending Regulation XIX of 1814 been felt. In 1863 Mr. Harington introduced into the Governor-General's Council a Bill for the North-Western Provinces, repealing Regulation XIX of 1814, and making the necessary reforms. He then stated that he had originally meant his measure to apply to the whole of the Presidency of Bengal. But as a local Council was about to be established for the Lower Provinces of Bengal, he thought it would be preferable that legislation for the provinces under the Lieutenant-Governor should be left to that Council. The subject had since continued to receive attention. In 1864 a very elaborate note was recorded by Mr. Bruce Lane, then Junior Secretary to the Board of Revenue, bringing together the whole of the discussions on different points which had taken place at various times. Mr. Lane was peculiarly well qualified to deal with the question, having then just held the post of Collector of Tirhoot, which district might be termed the mother of butwarrahs.

Two years ago Mr. Alonzo Money, as Member of the Board of Revenue, had caused the draft of an Act to be prepared, and this had been under the consideration of the late Lieutenant-Governor, when the famine came in and stopped all such proceedings.

In order to show the strong views which some officers held as to the mischief done by the existing law, MR. DAMPIER might read to the Council some passages out of Mr. Forbes' letter. Hon'ble members would better appreciate the full force of those passages when they remembered that five and twenty years ago officers were not in the habit of expressing themselves on official matters in strong language of this sort :—

"As at present conducted, I can only characterize butwarrahs as the most disgraceful system of gambling that the world perhaps has ever witnessed. The applicant for butwarrah, however small his share in the estate may be, challenges his coparceners to the game, and Government immediately obliges them all to take a hand, and enforces the payment of the stakes by dispossessing the losers and giving possession to the winner. During the game, however, Government only interferes for the purpose of punishing delay or interruption in playing, by imposing daily fines, which are awarded to the dealer, to whose cheating there is no check but an oath at the commencement."

The Ameen, of course, was the person referred to as the dealer. The Board of Revenue were a good deal scandalized by the language of that letter, but it was considered to be an admirable letter, and action was taken upon it. MR. DAMPIER had said that the alteration of the law was required for two purposes. The first was an interpretation of several important points which the present law left doubtful and open to discussion; the second was the introduction of such improvements in the procedure as experience had shown to be necessary, especially in order to expedite the proceedings.

The following were a few of the main points which had been the subject of much discussion, because the law was open to two interpretations.

The Hon'ble Mr. Dampier.

Were proprietors, whose names were not recorded as such, entitled to apply for butwarrah and to bring forward objections to applications made by others?

Another question was very familiar to officers who had served in Tirhoot under the name of the "mushtavah" lands difficulty. Estate A was liable for one item of revenue; estate B for another item; they were perfectly distinct estates, but unfortunately a tract of land, C, which belonged jointly and in common tenancy to both the estates, was held "mushtavah" between them. There had been much discussion as to whether, under such circumstances, a butwarrah of either estate A or estate B could be made on the application of one of its coparceners; and it had been ruled that the law did not allow the proprietor of one estate to force the proprietors of another estate to take any part, however small, in partition proceedings, and that therefore no butwarrah could take place in the existing state of the law. In fact there was no practical difficulty in the way of making the butwarrah of one estate under such circumstances. If a few fields were held jointly in two estates, one of which was brought under butwarrah, there would be no great hardship on the owners of the other estate not under butwarrah, to oblige them to divide that joint land between themselves and the owners of the estate under butwarrah. It was the form of the law which prevented that being done.

Then as the law stood, there was doubt whether the Collector had the power to levy from all the proprietors of an estate their quota of the butwarrah expenses as the money was required. Some thought that the Collector could not legally levy anything under the law, except from the applicant, until after the butwarrah was completed; others were of opinion that he could call upon each proprietor to pay his quota of the butwarrah expenses as they were required.

The most difficult of all the points of law arose out of under-tenures created in estates. Suppose the case of a sharer in common tenancy, who had a four-annas interest throughout every blade of grass and every clod of the soil in an estate, letting his share in putnee. As far as the other proprietors were concerned, this would have the effect of substituting the putneedar for the putneedar's lessor, *i.e.*, the putneedar would have a right to collect four annas out of every rupee payable by each ryot on the estate. Things being so, the lessor applied for a butwarrah of his share; he asked to have specific lands, yielding a quarter of the assets of the whole estate, separated from the rest, and assigned to him alone, as representing his interest in the estate. In such a case, was the putneedar to follow his lessor? Was he to be deprived of the right, which he acquired by contract from his lessor, of collecting four annas out of each rupee of every ryot's rent, and to be told "your putnee rights are now confined to the particular quarter of the estate which has been allotted to your lessor; you must not come near the remaining three-quarters of the estate." Or, was the applicant to be refused separation of his share on the ground that the putneedar was entitled to retain his right to collect four annas from every tenant on the estate. It was obvious that this was a most difficult question, but it was better that it should be decided one way or the other by the law itself.

Then there was another question which had been the subject also of consideration both by the executive and judicial authorities, and of conflicting decisions. It was the case in which one of the proprietors of the estate was neither an ijmali shareholder, holding in common tenancy throughout the whole estate, nor the holder of specific lands representing his interest in the estate; but his interest was represented by a fractional undivided share in one or two out of many villages which the estate comprised. Was such putneedar of a joint undivided sharer in a specific portion only of the estate—and not in the whole—entitled to apply for a butwarrah or not? At one time the ruling was that he *was* entitled to butwarrah; at another that he was not entitled, and there had been much litigation on the point. There would be no difficulty whatever practically in making the butwarrah if the law allowed it; but the law did not allow it, and MR. DAMPIER thought there was no reason whatever why a sharer so situated should not have the same privilege as other proprietors.

Another question was, where a sharer had refused to engage for the payment of the revenue assessed on his estate, was a proprietor who was out of possession on this account entitled to apply for butwarrah?

Then it was doubtful whether, in the event of an arrear not being realized by the sale of the defaulter's share, the protected shares were liable to sale. In dealing with this question, the Committee would of course bear in mind the provisions of Act XI of 1859, authorising the opening of separate accounts of the revenue paid in by different sharers; and the Bill would be fitted into the provisions of that law.

Then there was the question as to whether it was, under any circumstances, legal to strike off the file a butwarrah which had once been brought on to it, otherwise than under the provisions of the Act of 1836.

It was held that, however physically impossible it might be to effect a butwarrah in accordance with the law, no case could ever be struck off except under the provisions of that law. If any one objected to the striking off, the butwarrah must remain on the file indefinitely without making progress, which was absurd.

Another very serious point for consideration was whether any limit should be imposed, for the safety of the Government revenue, as to the size of the estates to be created by butwarrah. MR. DAMPIER had shown that Regulation VI of 1807 had asserted the right of Government to impose a limit, but that the restriction was soon removed. The last proposition made was a compromise, that an estate which did not pay more than ten rupees jumma should not be divided by butwarrah unless the proprietor had pledged himself to redeem the revenue charged on the lands which might be assigned to him by the payment of a lump sum.

These were some of the doubtful points which would require consideration. There were also certain other points in the working of the law which required amendment.

The mechanism of the existing law was such that it was practically in the power of any proprietor to throw obstacles in the way of a butwarrah being completed. It was only lately that a butwarrah came under MR. DAMPIER'S

notice, which had been fifty years on the file. Nine, ten, or even twenty years, was no unusual time. If at any moment any sharer wished to prevent his co-sharer from obtaining the separation of his share, which was the object of his application for butwarrah, he had only to present a series of frivolous objections to the Collector. Mr. DAMPIER could not put this question of delay in a more forcible way than Mr. Forbes had done in the letter which had already been referred to. In paragraphs 23 to 25 Mr. Forbes said :—

"Fines may be imposed on the zemindars for not delivering papers; but the zemindars may easily avoid these fines by giving papers that are utterly useless, whilst they may protract the business to an endless duration by prohibiting the ryots to attend and point out the land.

"It proved be required of this, I beg to refer to the heaps of *arzees* that immediately follow the appointment of a butwarrah ameen. The Collector must examine all these *arzees*, hold a proceeding on them, and submit them to the Commissioner with an English report. The Commissioner then returns them with an English letter. The zemindar in the meantime has been watching the correspondence, and complies just at the time that the coercion was about to operate. The papers are then even, perhaps, found to be incomplete or useless, or the *Regulations* affects ignorance of everything relating to the estate, and the correspondence between the Ameen, Collector, and Commissioner commences over again. In all this it is evident that the Collector must be entirely guided by the report of the Ameen, and the Commissioner by the report of the Collector, even if the Collector calls on the zemindar for a reply. It would therefore, in fact, be better, because more efficient, to give the Ameen the power to act summarily, and the zemindar the option of an appeal."

And what Mr. Forbes sketched out, would seem to Mr. DAMPIER to be the course which ought to be followed. Mr. Forbes said —

"The only adequate means that I can perceive of enforcing the butwarrah law is to vesting ameens with the authority of Deputy Collectors under Regulation IX of 1833, with full powers under Regulation VII of 1822, and to hold proceedings under Section 50 of Regulation II of 1819, and by remunerating them fully as liberally. The *jummabundee* of every village in the estate should be taken in the same careful manner as it would be if the estate were under settlement under Regulation VII of 1822 and Regulation VIII of 1833. The provisions of Section 19, Regulation XIX of 1814, should be carefully observed. The *jummabundee* papers should be finally delivered to the Collector, with a concise *purwah*, stating the peculiar circumstances of every village, as required by Section 8 of the present law, and all the sharers should be served with notice that the *jummabundee* will be finally adopted on a fixed future day, unless satisfactory cause be shown, and no steps should be taken towards the separation of shares until the *jummabundee* has been finally settled."

It was universally admitted that the status of the ameen was not such that he could be entrusted with the duties which the existing law assigned to him. The proper remedies seemed to have been shadowed out by Mr. Forbes, *i.e.* to make the Collector, or his representative, the Deputy Collector, take a more active part in the proceeding, and not to give the ameen the individuality recognised by the law, but merely to regard him as the agent of the Deputy Collector, leaving the Collector, or his Deputy, to deal directly with the proprietors.

If the Collector, instead of the ameen, required the proprietor to file his papers and produce his men, he would soon be able to enforce compliance with his orders, which the ameen could not do. The law assigned to the ameen the

initiative in assigning the different lands to the different sharers. It was true that the proceedings of the ameen were subject to the approval of the Collector, but this function of the ameen opened an enormous door to corruption. The ameen drew up his papers and gave them in to the Collector, after having made his proposed partition, and having carried through a mass of the proceedings, on the assumption that his allotment of lands would be accepted; and to this extent pressure was put on the Collector to confirm what the ameen had done. To interfere with it would perhaps be equivalent to retarding the completion of the butwarrah by some months. MR. DAMPIER would therefore take the assignment of lands entirely out of the ameen's hands, and would provide that the Collector or Deputy Collector should make the partition.

Under the present law, as MR. DAMPIER had said, if the share which the applicant claimed was disputed, the Collector was absolutely debarred from proceeding with the butwarrah until the question of right was settled in the Civil Court. However vexatious the objection might be, and however obvious its frivolity, the Collector could do nothing. That, MR. DAMPIER thought, should not be. He would mention one other great element of delay. The applicant applied for separation; everything had gone on well; the papers had been produced, and there was nothing left to be done but the confirmation of the Collector. At this stage another shareholder came forward and applied to have his share separated also. The whole thing had to be gone over again for the sake of separating specific lands for this new applicant. MR. DAMPIER thought that if a second applicant did not choose to come forward till near this final stage, he might well be required to wait until the proceedings for separating the original applicant's share were finally completed. Even then, of course, he would benefit to this extent, that the papers on which the first butwarrah was made would be available for the second; there would be little or no more field-work to be done.

MR. DAMPIER thought the Council would agree with him that he had said enough—he feared they would think it too much—to justify his application to bring in the Bill.

The HON'BLE MR. SCHALCH wished to make a few observations before the motion was put to the Council. After the very full exposition the Council had received from the hon'ble mover of the Bill, of what led to the difficulties attending the law of butwarrah, and the measures he proposed to meet them, MR. SCHALCH did not wish to keep the Council for any time on these points. He wished to add that the difficulties which had been pointed out were not at all overdrawn. The Board of Revenue had from time to time endeavoured to meet those difficulties by various rulings; but as these rulings had not the force of law, the Board had not always been able to succeed. In a great portion of Bengal but little recourse was had to the butwarrah law; but in other portions, such as Tirhoot, and other districts in Behar, the law was greatly in force. Speaking from memory, he believed that in one year there had been no less than eleven hundred cases in Tirhoot, and practically the district was fast becoming what might be called a ryotwaree district; and seeing how frequently the law was resorted to, he thought it was of great

importance that the subject should be taken up. From his own experience of the last six years in the Board, he knew that there was no more important measure that could be brought before the Council than the revision and improvement of the law of butwarrah. He proposed to say nothing now about the remedial measures suggested; these points would be better considered when the Bill went before a Select Committee. He trusted that the Council would allow so important a Bill to be brought into Council.

The motion was agreed to.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The HON'BLE MR. DAMPIER said he hoped the reason he should give would be considered sufficient to meet antecedent objections to his asking His Honor the President to suspend the Rules of the Council in regard to the Bill to provide for the voluntary registration of Mahomedan marriages and divorces. He presented the report of the Select Committee on this Bill at the last meeting of the Council, and he then hoped that the Bill would be in the hands of the members that night, which would have complied with the requisition of the Rule, that reports of Select Committees should be in the hands of members seven days before the motion could be made that the report be taken into consideration. It so happened that the report could not be in the hands of members until Monday, which reduced the time to five days instead of seven; and that made it necessary to suspend the Rules before the report could be taken into consideration in order to the settlement of the clauses of the Bill. That was the technical difficulty. But the advantage to be gained was not a technical, but a practical one, which was the benefit of the assistance which the Council would have from the presence of their hon'ble colleague Moulvie Abdool Luteef, to whom the Committee were mainly indebted for the details of the Bill, and who had made the subject his study; and his assistance would be valuable to the Council in considering the Bill. MR. DAMPIER had therefore to ask the President to suspend the Rules for the conduct of business, to enable him to move that the report of the Committee be taken into consideration.

The Rules having been suspended—

The HON'BLE MR. DAMPIER moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee.

The motion was agreed to.

The HON'BLE MOULVIE ABDOOL LUTEEF said—"I feel it my duty to speak a few words in regard to this Bill before it is taken into consideration by the Council. As the only Mahomedan member to whom the subject properly belongs, I am bound to express my gratitude to the hon'ble mover of this Bill, who has discharged his trust in reference to it most admirably. He has so well explained on this and other occasions the objects of the Bill from the impartial point of view of an outsider to Mahomedan society, that I may the better spare the Council an exposition in detail of the necessity of the measure, and how it will affect for good the entire life of the mass of my co-religionists. As the last

occasion on which my voice will be heard in this hon'ble assembly, I may be permitted to say that the measure under consideration is one on which, in the interests of my Mahomedan brethren, I have long set my heart. According to the limited opportunities open to me—a man of humble capacities in an humble position—I did my best to point out the impolicy of the proposal, which since became law in 1864, for abolishing the office of Kazi as an institution recognized by the State; and since the passing of that Act I have never ceased to urge, in the proper quarters, the advisability of reviving the office in some modified shape as that proposed in the Bill before us. In public and in private, I have brought to the notice of the authorities the evils of the absence of the old system of registration of Mahomedan marriages and divorces as they began to crop up—evils of which I heard from all parts of the country in which Mahomedans muster strong, and of which I became personally cognizant in my capacity of a Magistrate. Unfortunately, few were conversant with matters purely Mahomedan, or cared much about them; unfortunately, as the evils pressed upon the poorer classes only or chiefly, the higher classes of Mahomedans were comparatively indifferent about the matter; unfortunately, too, from the circumstances of Mahomedan society, from its comparative backwardness in availing itself of the advantages of English education, and the consequent apparent disinclination of Mahomedans to share in the blessings of political life and public discussion open to all classes of Her Majesty's subjects, and of which our Hindoo fellow-subjects properly make the most: unfortunately from these various causes my voice was perhaps the only Mahomedan voice that at all reached the proper ears, and no wonder that it failed of the desired effect.

"At last Sir Cecil Beadon, when Lieutenant-Governor of Bengal, was persuaded to rectify the evils of the enactment of 1864, so far as these provinces were concerned; and it would have been rectified long before this but for, I am sorry to say, a serious mistake committed by my late lamented friend, Moulvie Syud Azumooddeen Hussun Khan Bahadoor, the then Mahomedan member of this Council, who was permitted to introduce a Bill on the subject. That gentleman recommended to the Council the passing of a law for the *compulsory* registration of all Mahomedan marriages,—a measure which, while being for the most part a dead letter, would have been resented by the whole Mahomedan world as an attack on its religion and its social institutions that are an essential part of that religion. Both as a member of the Mahomedan community, who care for the preservation of the integrity of the Faith, and as a loyal subject of Her Majesty the Queen, and officer of that British Government, which has more than any other given peace and security to India, and under which the vast majority of Mahomedans, no less than of Hindoos, have so well thriven and prospered, I would be the last man to have anything to do with such a proposal, direct or indirect. The Mahomedan community felt not a little relieved when the former Bill was withdrawn by reason of the strong opposition it evoked. I am happy to think that the present Bill before the Council is of a far different character. It is simply a permissive Bill. It in no way attempts to detract from the validity of marriages otherwise valid according to the Mahomedan law. It simply offers the Mahomedan community a facility

for proving its marriages. The Mahomedans are welcome to avail themselves of the facility or not, as they choose. Of course it is expected that, practically, they will avail themselves of it largely; particularly the poorer classes, who execute no marriage settlements or rather contracts for dower, and who have, consequently, not the same means as the higher classes for proving their marriages in case of dispute. Thus will all the social evils of uncertainty be remedied. There is nothing in the Bill to which there can be any objection on the part of any Mahomedan. It is, indeed, one for which all sincere Mahomedans, who look with concern on the domestic misery and social immorality which are spreading, from its absence, through the entire lower strata of their community, will be grateful to the Government of Bengal. It will be a matter of no little personal satisfaction to me, who have laboured so long in the cause, to be assured—as I trust I shall be assured by the language and attitude of my hon'ble colleagues to-day—that though I myself may no longer share in their deliberations, the Bill is safe.

It remains for me to add a word on the single point on which I have had the misfortune to differ from the majority of the Select Committee, a point which has now to be decided by the superior wisdom of the Council. We have it in the report of the Select Committee—and the hon'ble member in charge of the Bill has repeated it in Council—that columns 10 to 14 of the Schedule, Form (A), annexed to the amended Bill, have been included, at my request, for better consideration in Council, though my hon'ble colleagues in Committee were of opinion themselves that these columns had better be omitted from the registers. These columns refer to specification of amount of dower of the two kinds, *moáyal* and *mowajjal*; whether any portion of it is paid at the moment; whether any property is given in lieu of dower, or any portion thereof; and to any special conditions that may be attached to the contract of marriage. The reason given for omitting these entries is, that they 'touch upon difficult questions, which are beyond the scope of the Act.' I do admit that it is difficult work to legislate, however delicately, on any subject connected with the religious or social institutions of a people with whose religion or social life the legislators may not be sufficiently familiar. The deliberations of the Council on the present Bill involve that difficulty; but beyond the *general difficulty*, I do *not* agree that there is any valid objection to including the particular entries in question in the registers to be kept under the Act, such as would not apply with equal force to dissuade the Council from having anything to do with the Bill altogether. If, however, for sufficient reasons, the Council make bold, as they have made *bold*—or this Bill would not now be at its present advanced stage;—it, I say, in view of the evils raging in Mahomedan society from its absence, the Council make bold to provide for a system of registration of Mahomedan marriages and divorces in accordance with the Mahomedan law and Mahomedan usage, and at the instance of Mahomedan society, I think that the Council ought not to stop short in the good work by refusing to include in the registration particulars which form an essential part of the Mahomedan marriage contract. So far from these entries touching upon questions foreign to the scope of the Act, they are of the very essence of it. By any scruple in including these

entries, all the best objects of the system of registration will be frustrated. The dower, I need scarcely remind hon'ble members, is a necessary condition of the Mahomedan marriage;—the consideration for the contract. It must, therefore, seem to all a needless delicacy to omit to provide for recording the consideration while providing for the record of the contract itself. But the necessity for providing a record of the consideration is above all questions of mere delicacy. The mere record of the marriage would be but an infinitesimal boon to the Mahomedan community; while the omission to record the dower would leave the door wide open to all that domestic misery and social demoralization, which it is, and ought to be, the object of the State to prevent, so far as it is preventible in accordance with Mahomedan law. Amid the great and almost absolute power granted by the Mahomedan law to the husband over the wife for arbitrary and capricious divorce, the dower, particularly the prompt portion of it,—the payment to them of which portion Mahomedan wives contrive to keep deferred as a constant check on their husband's caprice,—is the only guarantee; and it is a sufficient guarantee for the wife's good treatment at the hands of the husband. Unless the amount and description of the dower are registered, the Mahomedan wife would not have the benefit of that security of her position granted her by the law of dower. If the Council would not provide for record of the dower, they might just as well almost not provide for any record of the marriage. In that case, both marriage and its terms may be left, as now, to be proved by parties by oral evidence; and the uncertainties and frauds to which such evidence is liable, and from which man and woman in Mahomedan society alike suffer, will be incalculable."

The Hon'ble the Acting Advocate-General said he wished to make one or two remarks on the point in regard to which there was a difference of opinion between the hon'ble member in charge of the Bill and the hon'ble member who spoke last. He concurred with the Hon'ble Moulvie Abdool Luteef that the columns in question in Form (A) of the Schedule should be allowed to stand. The measure before the Council had been very aptly described by the hon'ble member in charge of the Bill as a measure intended to be a popular one, and the Advocate-General trusted it might be rendered in practice useful. He thought the reasons given by the hon'ble Moulvie for letting these columns stand were sound, as they were the ordinary clauses contained in contracts of marriages known as *Kabeenamahs*, the object of the Act being to provide particularly for the registration of the marriages of the poorer classes of the Mahomedans; and a great deal of fraud would be checked if these columns in the form of registration were allowed to stand, so that there might be some record of the amount of dower. The hon'ble Moulvie had referred to the fact that deferred dowers operated for the protection of wives. It appeared to him that it was clearly necessary for the protection of the husband, that in case of a divorce, the wife should not be able to put forward false or exaggerated claims as to the amount of dower previously settled between the parties. Therefore the Advocate-General thought it would be a useful measure to allow these clauses to stand. He did not think it would be

The Hon'ble Moulvie Abdool Luteef.

inconsistent with the scope and object of the Act to allow a few items to be included in the registration, which, as the hon'ble Moulvie said, were a part of the essence of the contract.

The HON'BLE MR. DAMPIER said that the reason of the majority of the Committee for wishing to exclude the items under discussion from the form of register was that they seemed to trench on those difficulties which the Council had resolved not to touch upon. The Council had directed the Committee to prepare a Bill providing for the registration of the fact of marriage and the persons between whom it was contracted. And so as to divorces. If the Council had directed the Committee to do what they could to give security to all the special conditions made at the time of marriage, the Committee possibly would have come to a different conclusion as to the admission of the proposed columns into the register. But the danger seemed to him to consist in the conciseness of the description which was required by the columns of the form in the schedule—"Whether any portion of the dower was paid at the moment? If so, how much? Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same? Special conditions, if any." All those conditions and details, it seemed to him, if not described with technical precision, would leave open a door to differences and disputes, which would not have been left open if the attempt had not been made to register these particulars. Those were the grounds upon which the majority of the Committee opposed the introduction of these clauses.

After some further discussion, the motion was agreed to.

Section 1, the interpretation clause, having been read—

The HON'BLE BABOO JUGGADANUND MOOKERJEE asked whether it should not be stated that the Kazi was to be a "public servant."

The HON'BLE the ACTING ADVOCATE-GENERAL explained that the Hon'ble Moulvie Abdool Luteef had a proposal to make to that effect, which would be brought forward at the proper time. It would be better to provide that the Kazis appointed under this Act should be public servants.

The section was then agreed to.

Section 2 was agreed to.

Section 3 provided that every Kazi should use a seal having an inscription in the Persian language.

The HON'BLE BABOO JUGGADANUND MOOKERJEE thought that the inscription should also be in the vernacular language of the place in which the Kazi acted. In the eastern districts there were a number of persons who only wrote and read Bengali, and in other places there were Mahomedans who only knew Uriya. In order that every person who went to a Kazi for the registration of a marriage or divorce should be cognizant of the inscription used in the seal, BABOO JUGGADANUND MOOKERJEE thought that two languages should be used, viz. Persian and the language of the place in which the seal was used. He therefore moved that the words "language of the place" should be inserted after the word "language" in line 4 of the section.

The HON'BLE MR. DAMPIER thought it unnecessary to have a seal in any other language than Persian.

After some further conversation the motion was negatived, and the section was passed as it stood.

Section 4 was agreed to.

Section 5 provided that the Kazi should keep register books.

The Hon'ble Mr. Schalch asked whether it should not be provided in what languages the registers should be kept.

The Hon'ble Moulvie Abdool Luteef observed that that matter would be regulated by the rules to be passed by Government under the provisions of section 23.

The section was then agreed to.

Sections 6 to 10 were agreed to.

Section 11 provided that copies of the entries in the registers should be given to the parties without charge.

The Hon'ble Baboo Juggadanund Mookerjee suggested that the words "such certificate shall be considered *primâ facie* proof of the marriage or divorce," should be inserted at the end of this section.

The Hon'ble the Acting Advocate-General observed that all public documents were evidence; and when the Kazi was made a public officer in the service of Government, entries made by him in the register would, under the Evidence Act, become evidence. This Council could not alter or in any way affect the Evidence Act, but they could provide a state of things that would fall within the Evidence Act.

The Hon'ble Moulvie Abdool Luteef said he intended to move thereafter, for the introduction of a Section by which every Kazi would be made a public officer; and when that was provided, all documents and registers kept by such public officer would be *primâ facie* evidence by the Evidence Act. He thought, therefore, that there was no necessity to insert the words now proposed.

The section was then agreed to.

Sections 12 to 22 were agreed to.

Section 23 provided that the Lieutenant-Governor might make rules for certain purposes.

The Hon'ble Mr. Dampier said that in order to emphasize the fact that the Lieutenant-Governor was expected to prescribe the language in which the registers should be kept, he would suggest the insertion of the following as amongst the things for which the Lieutenant-Governor might make rules:—"For regulating the language and the character in which the Kazis should keep their registers."

The Hon'ble the Acting Advocate-General observed that *primâ facie* the Kazis would write in the Persian character. Then, if there was any special necessity for using any other character, there was provision made in this section for the purpose, in the clause which authorised the Lieutenant-Governor to make rules "for regulating such other matters as appear to the Lieutenant-Governor necessary to effect the purposes of this Act." It appeared to him that it would be better to leave the section as it stood.

The HON'BLE MOULVIE ABDOOL LUTEEF thought the learned Advocate-General's suggestion the best.

The section was then agreed to.

The HON'BLE MOULVIE ABDOOL LUTEEF said he would now propose the introduction of a new section. There seemed to be a shadow of a doubt whether a Kazi appointed under this Act would be a "public servant" within the meaning of the Indian Penal Code, and a "public officer" within the meaning of the Evidence Act or not; and therefore it would be better to make him a "public officer in the service of Government" by this Act. As a necessary consequence, the documents and registers kept by him would be "public documents," and, as such, *prima facie* evidence. He moved that the following section be introduced after Section 23:—

"23A. Every Kazi shall be, and be deemed to be a public officer in the service of Government."

The HON'BLE MR. DAMPIER said he had not the advantage of the assistance of the learned Advocate-General in Committee. The point was considered, and MR. DAMPIER referred to the definition of "public servant" in the Penal Code, which included "every officer in the service or pay of Government, or *remunerated by fees* or commission for the performance of any public duty." The definition, it would be seen, precisely met the case of the Kazis under this Act, and that was sufficient; it would be unnecessary to introduce the proposed section, unless the use of the words "public officer in the service of Government," which stood in the amendment, were intended to have some different effect from that which would attach to the words "public servant." To this point MR. DAMPIER's attention had not been specially directed.

The HON'BLE THE ACTING ADVOCATE-GENERAL said the definition under the Penal Code was a definition for the purposes of the Code. Section 74 of Act I of 1872—the Evidence Act—provided that the following documents should be public documents—"documents of *public officers*, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions." Therefore all that was necessary was to provide that the Kazi should be a public officer. Also, to bring the Kazi under the Penal Code, we provided that the Kazi should be a public officer "in the service of Government." THE ADVOCATE-GENERAL had suggested the addition of the words "in the service of Government." There might be a scintilla of doubt on the point whether the Kazi performed public duties. He might be readily brought under the first by providing that he was a public officer; and to bring him under the Penal Code, the addition of the words "in the service of Government" were necessary. There might be a question whether the registers of these marriages would be public documents. Hence, in order to make the matter quite certain, it was advisable not to put it in the first branch, but in the second, so that he would be made a public officer; and being in the service of Government, would come both under the Evidence Act and the Penal Code.

HIS HONOR THE PRESIDENT inquired whether that would not give the Kazi a claim to pension. There would always be a certain amount of difficulty in admitting a fresh class of persons to pension. The tendency was, where any

persons performed *quasi*-public duties not under the Government, or under a corporation under the control of Government, to admit their claim to pension. Perhaps that question might be reserved for consideration at the next meeting.

The HON'BLE MR. DAMPIER said that the question as to pension of persons paid by fees was special, and subject to the decision of Government in each case. He did not intend to ask the Council to pass the Bill that day, and therefore perhaps the section might be passed now provisionally, subject to future reconsideration.

HIS HONOR THE PRESIDENT wished to have the opinion of the Hon'ble Moulvie Abdool Luteef, as to whether the Kazis themselves would accept the designation of officers of Government.

The HON'BLE MOULVIE ABDOOL LUTEEF said he thought they would be glad to be so recognised; and if they were declared to be officers of Government, their registers would be public property, and persons making false entries could be prosecuted: and unless it was provided that these registers were the property of Government, it would be difficult to procure the conviction of persons tampering or making away with them. He thought that was an additional reason why these registers should be declared to be public registers and the property of Government.

HIS HONOR THE PRESIDENT wished to be informed whether, in the hon'ble member's opinion, the Mahomedan community would accept such a position for the Kazis.

The HON'BLE MOULVIE ABDOOL LUTEEF thought that Mahomedans would be thankful if such a position were given to the Kazis. He had no doubt that they would be glad of it.

The proposed section was then agreed to, subject to reconsideration at the next meeting of the Council, the President observing that the Section was rather an important addition to the Bill.

Section 24 was agreed to.

Form (A) in the schedule having been read—

The HON'BLE MR. DAMPIER said that for the sake of taking definitely the view of the Council as to columns 10 to 14 of this form, he would move that those clauses be omitted. He had no strong personal opinion on the matter. He had already laid before the Council the grounds of his opinion, and the Hon'ble Member opposite (Mr. Schalch) also thought it would be better to omit them, as being less likely to lead to complications; but as such complications, when they arose, would come under the treatment of the learned Advocate-General, and his professional fraternity, MR. DAMPIER was willing to defer his opinion to that of his Hon'ble friend.

The HON'BLE THE ACTING ADVOCATE-GENERAL said that so far from thinking that the retention of these clauses would lead to complications, he thought they would avert complications that would otherwise arise. The benefit would be, that in the case of marriages amongst the poorer classes, where no written contract of marriage was provided, and where it only lived in the recollection of persons, there would be some certainty. The entries in the register in such cases would be brief, and without any very complicated conditions. No

doubt the 14th column provided for the record of special conditions, but that was a state of things not often likely to happen. The principal items that were necessary were "how much of the dower was *moajjul* (prompt) and how much *mowujjul* (deferred); whether any portion of the dower was paid at the moment, and how much; whether any property was given in lieu of the whole or any portion of the dower, with specification of the same." He thought that a record of such facts would not only be popular, but useful to that class of the people for whom their hon'ble colleague Moulvie Abdool Luteef had poured forth his sympathy that day, and it would be desirable to retain these clauses.

The Hon'ble Mr. Eldridge inquired whether, if these clauses were retained in the form of registry, it would be necessary that the parties should specify all these conditions; or whether it would be optional what columns should be filled up.

His Honor the President explained that it was binding on the parties to give the information required by clauses 10 to 14, or they must forego registration. If, under those circumstances, they declined to register, the marriage did not thereby become invalidated.

The Hon'ble Moulvie Abdool Luteef observed that of these five clauses, the first two would apply to all cases; the remaining three would not apply to all marriages. It was very seldom that a portion of the dower was paid, or any property given at the time of marriage, or in which there were any special conditions made. If these circumstances did not arise, those columns would be left blank.

The Hon'ble Mr. Dampier said he knew of a case, which was also in the knowledge of his hon'ble colleague Moulvie Abdool Luteef, in which a friend had made it a special condition on his daughter's marriage, that if during her life-time, the husband married another wife, she should by that act become divorced. Was it safe to express such a condition as this in the loose way in which a Kazi would express it in his register? Mr. Dampier feared that cases would arise in which the loose description of conditions and particulars in the registers, although registered in perfect good faith, might give an opportunity for differences of construction and disputes, if *mala fides* should afterwards arise.

The Hon'ble Mr. Schalch said he agreed with the Hon'ble Mr Dampier in thinking the insertion of these clauses beyond the scope of the Select Committee as laid down in the instructions to them by the Council. He considered it, however, quite within the power of the Committee to adopt them, if they thought it right to do so; and he would not lay quite so much stress as his hon'ble friend did on the question of complication. The entries would be merely a record of what the statements of the parties were at the time, and they would be open to be rebutted by other evidence. After what had been said by the learned Advocate-General, if the Council thought fit to go beyond their original instructions and adopt these clauses, Mr. Schalch had no objection to offer.

Form (A), with the clauses 10 to 14, were then agreed to; and so also were the Forms (B) and (C).

The title and preamble were then agreed to.

The Hon'ble Mr. Dampier said he did not propose to ask the Council to pass the Bill now, because it was safer that, after having been considered in Council, it should be carefully looked over by the learned Secretary and the Mover of the Bill.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier said that although he had not put a formal motion on the paper, as the Select Committee on the Bill for the recovery of loans of money and grain made by Government had lost one of its most valuable members in the Hon'ble Baboo Digumber Mitter, and as it would be advisable that the Committee should be a little strengthened as well, he would move that the names of the Hon'ble Baboo Kisto Das Pal, and of the Hon'ble Mr. Rivers Thompson, be added to the Select Committee on the Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 23rd January.

Saturday, the 23rd January 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble C. E. Bernard,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble F. G. Eldridge,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syad Ashghar Ali Diler Jung, c.s.i.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier said that the passing of the Bill to provide for the voluntary registration of Mahomedan marriages and divorces was postponed at the last meeting of the Council at his request, in order to enable the mover and the Secretary, as was usual, to go carefully over the provisions as finally amended. That had now been done, and the result was a rather long list of amendments. But hon'ble members would observe that, with one exception, they were purely verbal amendments. He had now to move that the Bill be further considered, in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that for section one the following be substituted :—

"In this Act—unless there be something repugnant in the subject or context—

"'Kazi' means any person who is duly authorized under this Act to register marriages and divorces.

"'Inspector-General of Registration' and 'Registrar' respectively mean the officers so designated and appointed under the Indian Registration Act, 1871, or other law for the time being in force for the registration of documents.

"'District' means a district formed under the provisions of the Indian Registration Act, 1871."

These were merely explanatory clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER then moved a verbal amendment which was not in the notice paper, that in section four, line 1, for "Local Government," the words "Lieutenant-Governor" be substituted.

The motion was agreed to.

The HON'BLE MR. DAMPIER also moved that in the same section, line 1, for "provide," the word "supply" be substituted. The word "provide" rather implied that the thing in question be provided at the expense of the Government, which was not to be done. The seals and registers to be used by the Kazis were to be supplied by the Government, and paid for by the Kazis out of the fees which they got.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved the following amendments in section fourteen, the object being to make the nomenclature uniform :—

In section fourteen, in the fifth line, after the word "Registrar" to insert the words "of the District." In the seventh line for "District Registrar" to substitute "Registrar of the District." In the twelfth line after "Registrar" to insert "of the District." In the sixteenth line, for "District Registrar" to substitute "Registrar of the District."

The motion was agreed to.

The HON'BLE MR. DAMPIER moved—

In section fifteen, line one, for "Every District Registrar and Kazi shall" to substitute "Every Registrar of a District and every Kazi shall for the purposes of this Act."

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that in the same section, line 7, the words "other than the first copy referred to in section eleven of this Act" be inserted after the word "Register."

He said that section fifteen empowered the Kazi to levy certain fees for granting copies. But in section eleven it had been provided that a copy of the entry in the register was to be given immediately after the registration, and that this first copy should be given without the payment of any fee. The amendment merely referred to that section, so that there might be no chance of misapprehension in the construction of the Act.

The motion was agreed to.

Verbal amendments were, on the motion of the HON'BLE MR. DAMPIER, made in sections sixteen and seventeen.

The Hon'ble Mr. Dampier moved that in section nineteen, line 1, for "document" be substituted the words "marriage or divorce." This error, he said, had crept into the Bill from the circumstance of this section having been taken from the Registration of Assurances Act. The word was out of place in this Bill, which only applied to the registration of marriages and divorces.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the following words be inserted in section twenty-three, after the fifth clause:—

"for regulating the application of the fees levied by Registrars of Districts and Kazis under this Act and"

The object of this amendment was to meet cases which might render necessary executive orders of the Government for regulating the application of the fees raised under the Act.

The motion was agreed to.

The Hon'ble Mr. Dampier said the next motion in his name was to move that the Bill be passed; but as His Honor the President wished that the passing of this Bill be deferred to the next meeting of the Council, he would not at present make that motion.

His Honor the President asked the Hon'ble Nawab Syad Ashgar Ali to favor the Council with his opinion on the general merits and policy of the Bill.

The Hon'ble Nawab Syad Ashgar Ali would say a few words in compliance with the request of His Honor the President. Being the only member of the Mahomedan community in this Council, he had thought it his duty carefully to consider the Bill and to peruse all the papers connected with it. He had also consulted his friends, both of the Sunni and Shiah sect, and he found that they were agreed that a Bill of this kind should be passed, in order to prevent the frauds which had hitherto been practised. He thought that the Mahomedan community in general would be gratified by the passing of this Bill.

His Honor the President then observed that perhaps the Council would allow the motion for the passing of the Bill to be deferred for a week, with the view that the Bill might be taken into consideration once more before it was passed.

The motion that the Bill as amended be passed was then postponed.

REGISTRATION OF JUTE WAREHOUSES.

The Hon'ble Mr. Hogg said the Bill which he proposed to move be read in Council had for its object the amendment of the Jute Warehouse and Fire-brigade Act, especially with a view to modify the restrictive clauses of the Act, which the owners of jute warehouses had brought to the notice of the Council were unnecessary and unduly prejudiced the jute trade; and their representation was supported by the Chamber of Commerce. From the papers circulated to the Council, it would be seen that the owners took exception to the clauses in Section 7 of Act II of 1872, especially in regard to the clause which provided that loose jute should not be dried except within buildings the walls of which should be of burnt bricks, or of stone, or of iron, and so on. They also pointed

out that it was unnecessary that the roofs of jute warehouses should be constructed of iron or masonry, as provided in the Act. Another objection which they took, though not a very strong one, was with regard to the fees, which they maintained were unnecessarily high. It was pointed out by him, when he asked leave to introduce this Bill, that although the concession as regards the drying of jute might well be conceded in the suburbs of the town, it would be objectionable, as regards the town of Calcutta, to remove the restrictions which already existed. To introduce a definite clause in the proposed Bill, which provided for the requirements both of the suburbs and the more crowded thoroughfares in the town, would be difficult. He had therefore in the draft Bill prepared a section to the effect that this matter should be left to the discretion of the Government of Bengal. If the Council would look at Section 7 of Act II of 1872, they would find that it included all the prohibitory clauses connected with the granting of licenses for jute warehouses. There would be found all the conditions under which licenses were to be granted; and the 7th clause of that section provided that the Justices might make such other special conditions as the circumstances of each locality seemed to them to require. In the Bill which he had prepared, it was proposed that the whole of Section 7 of Act II of 1872 should be repealed, thereby removing from the Act all definite prohibitory clauses; and that power be given to the Government of Bengal from time to time to issue such rules for the granting of licenses to the owners of jute warehouses as might be deemed necessary, having regard to the special locality for which such licenses were applied. If that principle were accepted by the Council, no doubt the Government of Bengal would issue separate rules for the suburbs of the town, where the occurrence of fires need not be much apprehended; and separate rules for the town of Calcutta, where the Government would probably consider that greater care and caution in the granting of licenses were absolutely necessary. If that principle were accepted, it would remove the objection of the proprietors of jute warehouses in regard to the restrictions to be placed on the licensing of jute warehouses in Howrah and the suburbs. No doubt the Government would remove the condition which prohibited the roofs of jute warehouses being made of any other material than iron or masonry.

When he moved for permission to introduce this Bill, he also pointed out that, according to the Act as it stood, it was not clear what person was liable to punishment—whether the owner, the occupier, or the person actually infringing the conditions of the license. Mr. Hogg had therefore introduced in the Bill a clause imposing the primary liability on the occupier, and had provided that in addition to the name of the owner of a jute warehouse, the name of the occupier should be invariably entered in the license; and by section eight of the Bill, the actual infringer of any rule was also rendered liable to penalty.

Since the Bill had been drafted, there had been a further representation received from the Chairman of the Suburban Municipality on behalf of that body. They desired that the arrangements for the suburbs, as regards the licensing of jute warehouses and the establishment and maintenance of a fire-brigade, should be altogether distinct from that of the town of Calcutta. They

argued that during the last few years there had been but few fires in the town and suburbs; that therefore the annual expenditure now incurred seemed unnecessarily high; and then they went on to ask for permission to have a separate fire-brigade for the suburbs. He thought the Council would agree with him that, considering the position of the suburbs as regards Calcutta, it would hardly be wise to have a separate fire-brigade for the suburbs. The Suburban Commissioners also urged that they be allowed to expend the whole of the surplus proceeds derived from the licensing of jute warehouses on the general municipal improvement of the suburbs, and that the fund should not be under the control of the Justices of Calcutta. This suggestion was in a measure met by the Bill before the Council, in which there was a section which provided that the surplus fund should be applied for such purposes as the Justices with the sanction of the Lieutenant-Governor might direct. If the principle of that section was accepted by the Council, it would be within the power of the Lieutenant-Governor to distribute the surplus arising from fees on account of jute warehouse licenses in such proportions as he might think best between the town and suburbs.

The Suburban Municipal Commissioners also pointed out that Honorary Magistrates were at present in the habit of inflicting very small fines on persons who infringed the law, and it was therefore necessary to impose a minimum fine, and to make it compulsory that the minimum fine should be imposed in cases of repeated convictions. How far such an amendment of the law was desirable would no doubt be carefully considered in Committee.

With these few remarks, he begged to move that the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, be read in Council.

The Hon'ble Baboo Kristodas Pal said this was one of those little amending Bills the principles of which did not need much discussion. There were, however, one or two points involved in it with regard to which he wished to offer a few remarks. The hon'ble mover of the Bill had stated that it was inconvenient to embody in the law the conditions which were imposed in regard to the grant of licenses for jute warehouses, and that the power to do so should be delegated to the Lieutenant-Governor. For his own part, he thought the Council would not be acting fairly by throwing the task of legislation upon the head of the executive Government and thus shifting its own responsibility. He believed that the Lieutenant-Governor would not refuse to undertake any duty which this Council in its wisdom might assign to him. But Baboo Kristodas Pal was not sure whether any one in His Honor's position would possess that detailed acquaintance with the minute requirements of the town which would enable him to discharge the duty to his satisfaction. He would necessarily be dependent on the town and suburban corporations for information and advice; and the Council, by adopting the principle recommended by the hon'ble mover of this Bill, would be practically making over the business of legislation to the several corporations affected by the Bill. This, Baboo Kristodas Pal held, would not be fair to the head of the executive Government, nor to the Council, nor to the public at large. It was meet that we should share with His Honor the responsibility of framing the rules and regulations. Besides, Baboo Kristo-

DAS PAL submitted that when a legislature was called upon to prescribe penalties for certain offences, it ought to know what were the acts which would constitute offences under the law. We had no opportunity of judging as to whether the penalties provided would be sufficient or not for the offences contemplated by the Bill, but to be defined hereafter by executive authority. Such a proposal appeared to him anomalous and unsound in principle. He admitted that the conditions prescribed in the present Act were stringent, and had worked in some cases oppressively. It was the function of the Council to remedy those defects, and not to shirk its own responsibility. The subject had attracted the attention of some of the proprietors of jute warehouses and the Chamber of Commerce, and he admitted that the representations of those gentlemen were grounded on facts and therefore entitled to consideration. If the Council referred to the opening speech of His Honor the President, when the Council was summoned this year, and to the address of the hon'ble mover, when he applied for leave to introduce the measure, they would find that the original proposal was to modify those conditions of the law which were complained of in the representations which had been received, and not to exclude altogether from the Act all the conditions which were imposed on the grant of licenses for jute warehouses, and leave them to the discretion of the executive Government. There might be differences of opinion in regard to some of the conditions, but BABOO KRISTODAS PAL thought those differences might be reconciled in this Council without much difficulty. It might be advisable—in fact desirable—to give power to the town corporation, or to the Lieutenant-Governor, to make subsidiary rules or bye-laws consistently with the substantive law, just as was now done under the Municipal Acts. In fact such a provision was contained in the present Act. Clause 7 of Section 7 of Act II of 1872 provided for the imposition, in addition to the conditions specified in the law, of such other special conditions as the Justices might, on consideration of the special circumstances of each jute warehouse, deem necessary to prevent risk to life and property in the neighbourhood. That discretion might well be left to the town and suburban corporations and the executive Government, and would meet the case of the town and the suburbs alike; but the substantive law, he submitted, ought to be laid down in the Bill, with a discretion to the executive authorities to make bye-laws consistently with the substantive law.

The next point to which he wished to draw attention was as to the scale of fees prescribed for the granting of licenses. It would appear from the papers circulated to the members along with the Bill, that the Suburban Municipal Commissioners recommended the lowering of the rates for suburban licenses. Mr. Peacock, Magistrate and Chairman of the Suburban Municipality, proposed that the scale should go down so low as Rs. 150. And with regard to this part of the law, BABOO KRISTODAS PAL might read to the Council an extract from the report of the Justices of the Peace for Calcutta for the year 1872, which was to the following effect:—

"The minimum fee for a license is Rs. 250, which was prohibitory in the case of several small houses This point should be remembered whenever any amendment of the Municipal Acts is in contemplation."

He might observe that the present rate of fees, as far as he was aware, had been laid down as a tentative measure only. Neither this Council nor the town corporation were then in a position to estimate exactly the proceeds of the new licenses. On the other hand, a heavy charge had been imposed on the two municipalities for the maintenance of a fire-brigade. It was therefore necessary that such a scale of fees should be prescribed as would cover the possible charges. The working of the Act for the last two years had shown that there was great room for reduction in the scale of fees. He believed the surplus in the hands of the Justices now amounted to about Rs. 60,000. It was a question for the Council to consider whether a particular branch of trade should be made to contribute to the general municipal funds of the town. He admitted that jute was a thriving branch of our national industry, and that the small tax which had been laid upon it in the shape of license fees did not materially check its progress or expansion; but the Council ought to consider this tax upon jute from another point of view. There were, as the Council was aware, two classes of licensees: *firstly*, those who themselves occupied the warehouses; and *secondly*, those who let their licensed godowns; and the present scale of fees pressed severely upon the last-mentioned class; and this hardship, so far as proprietors of small houses were concerned, was admitted by the Justices in the report already quoted. Baboo Kristodas Pal could state from his own knowledge that the tendency of municipal taxation in the town was to depreciate the value of house property; and it might be fairly questioned whether the legislature would be acting wisely by aggravating that tendency. It was therefore worthy of consideration whether the scale of fees for the licensing of jute warehouses should not be revised.

The hon'ble mover of the Bill had pointed out the necessity of fixing the responsibility of carrying out the provisions of the law upon the occupier. Baboo Kristodas Pal must say that he considered this provision a very great improvement on the existing law. The present law was not quite clear upon the subject, and practically the owner of the house, who was the owner of the license, had hitherto been held liable. As already observed, there were two classes of licensees. Now, it was very hard that the owner of the house, who took out a license, but had no connection with the business, should be made responsible for a breach of any of the conditions upon which a license was granted when he could not in any way control the action of the occupier. The amendment of the law on this point was much needed, and would remove a great complaint which had been made on all sides. But he did not agree with the hon'ble mover that a high fee should be levied on the registration of the occupier's name; he did not see why it should be made a source of revenue. We ought to encourage and facilitate the registration of the names of occupiers, and in that view he would recommend a nominal fee of one rupee, and not twenty rupees, as proposed in the Bill.

Next came the question of what he might call the decentralization of the fire-brigade fund. That point was raised in the letter from Mr. Peacock, the Chairman of the Suburban Municipal Commissioners. It appeared that the control which the Justices at present exercised over the fire-brigade fund was

a source of irritation to the Suburban Commissioners. They seemed to think that they were, as it were, sacrificed to the interests of the town. He must confess, as he thought, that they were greatly mistaken in that view. According to Mr. Peacock's own letter, it would be seen that the number of fires was very much greater in the suburbs than in the town. In fact, if the Council looked into the statistics of fires in the town, he believed it would admit that there was very little cause for the alarm which in 1872 led to the enactment of the present law. He found from an official paper, which he held in his hand, the following statement of fires in Calcutta from 1865 to 1871 :—

	Number of fires	Pucca houses	Tiled houses	Remarks
1865	12	9	4	Three jute-godowns
1866	7	3	4	Two ditto
1867	10	6	6	None
1868	6	5	1	One jute screw house and one jute godown
1869	9	5	4	Two jute-godowns
1870	8	3	5	None
1871	12	6	4	(Have two four jute screw-houses

Since the Jute Warehouse Act had come into operation, he found that there were four fires in the town and 29 in the suburbs. So after all it might not unreasonably be said that the fire-brigade was maintained chiefly for the benefit of the suburbs, and that the town was unjustly taxed for the advantage of its neighbour.

If anybody would gain by the decentralization of the fire-brigade fund, it would be the town of Calcutta; and he did not see any reason why that principle should not be carried out. Formerly, as the hon'ble mover of the Bill could bear him out, the Justices worked the town fire-brigade at an annual expense of Rs 6,000. Now the fire-brigade costs somewhere about Rs 20,000 annually. [The Hon'ble Mr. Hogg: Rs. 25,000.] He, however, agreed with the Suburban Municipal Commissioners that the town and the suburbs should be independent of each other in the management of the fire-brigade. The Justices might have their own establishment, and the Suburban Commissioners their own; and whatever surplus might accrue from their respective funds, they should be at liberty to apply to their own purposes. There would be then no just cause of complaint or heart-burning in the matter.

As regards the imposition of a minimum fine, as suggested by the Suburban Commissioners, he hoped the Council would not do anything of the kind. In Calcutta the working of the Jute Warehouse Act, as far as he was aware, and he believed the hon'ble mover would bear him out in this statement, had been fair and equitable, and he thought there did not exist any necessity whatever for fettering the discretion of the Magistrates in the way proposed; and if the Act had worked successfully in the town, he did not see why it should not work with equal success in the suburbs. To take away discretion from the Magistrates in the adjudgment of fines according to the merits and circumstances of each case, would be to tell them to leave their consciences behind when sitting on

the Bench. This interference with judicial discretion was opposed to the principles of the substantive criminal law of the country, for the Penal Code prescribed only maximum, and not minimum, penalties; and he hoped that the Council would not sanction an infraction of the general law of the land.

The Hon'ble Baboo Doorga Churn Law said, he agreed with the hon'ble member who had last spoken that the substantive law as to the conditions on which licenses should be granted for the establishment of jute warehouses should be laid down in the Bill, and that power might be granted to the executive Government to frame rules or bye-laws in accordance with such law. He thought the present opportunity should be taken to revise the scale of license fees. The present scale was undoubtedly high, and he thought the minimum ought to be reduced to Rs. 100 or Rs. 150, and the intervening rates should also be reduced.

Then, with regard to changes of occupation, the provision, as worded in the Bill, met only the case in which a person took an entire house; but there were cases in which a warehouse was let to several parties in several parts or portions, the license being granted to the owner or landlord. For such cases provision ought to be made for the registration of such occupiers on the application of the owner or landlord. It was proposed to charge a registration fee of twenty rupees on occupiers. He could not see any occasion for imposing such a fee. The proceeds of license fees ought to be quite ample for all purposes; and to charge another fee on the occupier would be only to increase the burden already existing.

The Hon'ble Baboo Juggadanund Mookerjee said, with His Honor the President's permission he begged to make a few observations, especially with reference to the fifth section of the Bill, which was one of the subjects now under consideration. It appeared that under the present law a tax was levied on the grant of licenses to the owners of jute warehouses in the town and suburbs, and the proceeds were to be applied for the purpose of maintaining a fire-brigade, which would remain under the sole control of the Justices of the Peace for Calcutta. Well, he saw, from the returns submitted both by the Justices and the Suburban Commissioners, the following results for the suburbs—

From 1st August 1872 to 31st July 1873—

	Rs.	A.	P
Receipts.			
Jute warehouse license fees	16,766	10	8
Fines under the same Act	3,706	8	0
Total ...	20,473	2	8
Expenditure.			
Establishment	3,992	13	3
Contingencies	147	0	0
Total ...	4,139	13	3
Remitted to the Calcutta Justices	16,333	5	5

	Rs.	A.	P.
RECEIPTS			
From 1st August 1873 to 31st July 1874—			
Jute warehouse license fees .	20,479	2	5
Fines	1,883	8	0
Total	22,362	10	5
EXPENDITURE			
Establishment .	4,527	10	0
Contingencies	238	3	0
Total .	4,765	13	0
Remitted to the Calcutta Justices .	17,596	13	5
Amount collected by the Calcutta Justices from August 1872 to 31st December 1872 .	31,329	0	0
Amount expended	12,123	0	0
Saving	19,206	0	0
Amount collected by the Calcutta Justices in 1873	18,875	0	0
Contribution by the Suburban Commissioners .	16,343	0	0
Total ...	35,208	0	0
Amount expended	21,064	0	0
Saving	14,144	0	0
Amount collected by the Calcutta Justices in 1874 ..	41,494	0	0
Contribution by the Suburban Commissioners ..	17,597	0	0
Total ...	59,091	0	0
Expended	31,527	0	0
Saving	27,564	0	0

The Act did not provide anywhere as to how the surplus was to applied, but there was no power to the Suburban Commissioners to make use any portion of the money except in the way mentioned, namely to pay necessary establishments and the like, and remit all the surplus to the Justices of Calcutta. The Council would see the amount of saving made in this year. Mr. Peacock in his letter said :—

"That the funds are liable to be appropriated towards purposes for which they were never intended, is shown by the action of the Justices in allotting money from that fund for extra police to keep the roads within the town of Calcutta clear from overcrowding, and that the suburbs do not receive anything in return commensurate with the sum paid by them."

From that it was quite clear that the Municipal Commissioners of the suburbs were taxed for purposes for which they in no way benefited. The whole of the money went to the Justices for Calcutta, who were at liberty

to apply it as they thought best, and it appeared that they employed it to pay for extra police to keep the roads within the town clear. And for this reason and other reasons stated in the letter of their Chairman, the Commissioners of the suburbs proposed that a separate fire-brigade should be maintained by them. That, he thought, stood to reason, because from the report of the Chairman of the Justices and what had fallen from the hon'ble member opposite (Baboo Kristodas Pal), it appeared that the greater portion of the fires took place in the suburbs. If that was so, the use of the fire-brigade was chiefly limited to the suburbs, and the people within the town derived little or no advantage out of the brigade that they maintained. It therefore stood to reason that the Suburban Commissioners should have the control of their own fire-brigade, and it was also fair that the town of Calcutta should not be burthened with the expense of a fire-brigade which was used chiefly for the benefit of their neighbours. Therefore the Chairman of the Suburban Municipality proposed that they should be empowered to maintain a fire-brigade of their own, and it seemed that they had sufficient funds for the purpose. At the time the Act of 1872 was passed, the Legislature never anticipated that there would be a surplus fund: they even seemed to expect that the sums realized from the grant of licenses would not be sufficient to maintain the expense of a fire-brigade. Now it appeared that a large proportion of the sums realized would from time to time be saved, and there was at the present time a large sum of money in the hands of the Justices. It was therefore proposed by the Suburban Commissioners that they should maintain a fire-brigade of their own; and if that proposition was not agreeable to the Council, they suggested that they should be permitted to remit to the Justices of Calcutta only such amount as was necessary to maintain the fire-brigade under the control of the Justices, and that the Commissioners be allowed to retain in their hands the surplus proceeds for the proper keeping of the suburban roads, the traffic on which had recently very much increased by carts laden with jute constantly passing through them, and the damage done to them had therefore proportionately increased. It appeared that there was a surplus annually accruing of from Rs. 16,000 to Rs. 20,000, and the whole of that sum went to the Justices of Calcutta. If the first of these propositions was not agreeable to the Council, Baboo Juggadanund Mookerjee thought that the second proposal, namely that the Suburban Commissioners should have the benefit of their own surplus proceeds, should at least be conceded.

With these observations he would ask the Council to take this matter into their consideration, and he had no doubt that the Select Committee to whom the Bill might be referred would deal with the representation of the Suburban Municipality in a just and equitable manner.

The Hon'ble Mr. Eldridge said he should not have ventured to encroach upon the time of the Council but for his almost immediate departure from India. He had no doubt that many of the points which had been discussed, and the suggestions which had been made, would be duly considered in the Select Committee; but having no other opportunity of addressing the Council upon

this subject, he desired to express his satisfaction at the manner in which the hon'ble mover had conceded, in the Bill before the Council, the requests made by a large and responsible body of merchants, who were largely interested in the question, and had a great amount of money at stake in connection with the jute industry. He regretted that he could not agree in the remarks of the hon'ble members who proposed that a substantive law should regulate entirely the working of these jute licenses. It seemed almost impossible that hard-and-fast rules could be made which would apply equally to a large place like Calcutta, in which many of these jute warehouses and jute screwhouses existed, and to a place like the suburbs, where the warehouses were more scattered. Many proprietors of jute warehouses had gone to some distance from the city, probably with the view of being to a certain extent in an isolated position, where the very strict rules made for the more crowded localities would not be enforced as regards them. There were many jute warehouses in the vicinity of the town which were surrounded by huts and villages which would be endangered by the application to them of the same lax rules which would with safety apply to the more distant localities. And it seemed to him that the proposal to leave a discretion in the matter to the Lieutenant-Governor was only reasonable and just. When the law was put into force, in 1872, MR. ELDRIDGE was not in India, but he noticed that the hon'ble mover, in speaking on this subject (January 2nd) on the occasion of the introduction of this Bill, referred to the fact that, in consequence of certain disastrous fires having occurred, a great deal of alarm had spread through the town with regard to the dangers to be apprehended from a recurrence of such conflagrations, and that the Chamber of Commerce, the Trades Association, and other representative bodies, cordially co-operated in the passing of such a law as was then deemed to be necessary. But now, after the experience of two-and-a-half years, many of the rules which were passed in a time of semi-panic were found to be obstructive and unnecessary; and it was believed that, with the practical experience gained within that time, it might be left to the discretion of the Lieutenant-Governor to grant certain facilities in certain localities which could not be granted to others. As far as the erection of buildings with iron beams was concerned, it appeared to him doubtful whether that was a necessary measure at all. In a building (the Riverside Press) erected, he believed, since the passing of Act II of 1872, by the Port Commissioners, many of the members of which body were Justices of the Peace for Calcutta as well, he thought he had seen teak beams even in the engine-rooms, and the talented and efficient Engineer to the Port Trust told him that he was not quite clear that teak beams were not better for the purpose than iron beams. MR. ELDRIDGE had hoped that the hon'ble mover would have taken up some of the other suggestions which had been made by the large representative body of merchants with reference to this matter in their petition now before the Council; and from the conversation he had with the hon'ble member, MR. ELDRIDGE understood that he would have done so if the representations had not reached him after his draft of the Bill had been prepared. MR. ELDRIDGE hoped, however, that the matter would be seriously considered by the Select Committee, as he thought the experience of practical men, who had the carrying

out of the rules now laid down, was entitled to great weight, as they also had a very large interest in the property, and had every desire to prevent conflagrations; for although they might be recouped by insurance, the loss of time and interest on their capital would fall on them in the event of any accident of that kind taking place.

With regard to the scale of charges for licenses, he thought it was unnecessary and unfair to retain the present rates. The Calcutta Municipality had apparently proceeded, prior to 1872, almost entirely under the delusive hope that there were to be no fires in the city and no necessity for a fire-brigade. Suddenly when two or three jute warehouses were burnt down, the Justices immediately organized an expensive fire-brigade, and recouped themselves almost entirely from the jute trade. He thought it should be taken into consideration whether a fire-brigade was not an absolute necessity in a large city like Calcutta, independently of the question of jute or cotton warehouses. There were stores of hay and straw and a variety of other combustible substances kept in native huts and warehouses, as well as in the open air, all liable to conflagration; and, admitting that every ounce of jute and cotton was kept beyond a distance of ten or fifteen miles from the town, there would still be the necessity for a fire-brigade. Why, therefore, should the proprietors of jute and cotton warehouses alone be taxed for the support of one? He thought it was most unfair and unreasonable that they should be taxed more than a very moderate proportion of the cost. He found from a letter of the Chairman of the Suburban Municipal Commissioners, under date of August 18th, 1873, that during the previous year the license fees and fines had contributed Rs. 20,473 towards the expense of maintaining a fire-brigade, which, from MR. ELDRIDGE's knowledge of the increased number of jute warehouses and screwhouses now existing, had doubtless already been augmented very considerably, and would be still more increased in future years. It was a severe tax on a growing industry, which ought to be fostered as much as possible in these days of competition. He thought, therefore, it was but reasonable that the scale of these license fees should be reduced rather than be allowed to exist as it at present stood

The HON'BLE MR. HOGG said he was not at all prepared to admit that the principle of the Bill as regards shifting the responsibility from the Legislature to the Lieutenant-Governor was open to the objection which had been brought forward. As pointed out by the Hon'ble Mr. Eldridge, it was impossible in any Act to lay down hard-and-fast rules which should apply equally to the suburbs, where very stringent provisions were not necessary, and to the town of Calcutta, where the greatest possible care was necessary. Circumstances might arise from time to time which might require the rules to be altered; and if we were to lay down rules in the Act, it would require an alteration in the law whenever experience showed that the rules were not quite in accordance with the requirements of the safety of the public.

As regards the reduction of the rates of fees for licenses, he thought they ought not in any great measure to be reduced, especially in the town of Calcutta. It was urged that there were many small houses in the town where jute was stored, and it was hard that owners of such warehouses should be called upon to pay a fee of Rs. 250.

The Hon'ble Mr. Eldridge.

He submitted that it was these small warehouses which were most dangerous in town as regards conflagration, and that, as far as possible, it was expedient that such houses should be suppressed, and the trade in jute limited to large godowns belonging to persons who were in a position to carry out such precautions as would reduce to a minimum the risk to property in the neighbourhood. As regards the suburbs of Calcutta, a reduction in the rates of license fees might well be made, and the lowest rate be reduced to Rs. 150; because the same arguments which applied to the storage of jute in the town did not apply to the suburbs.

It was urged that the value of property in the town had of late very materially decreased, owing to the increase of municipal taxation and other causes. That statement was one which could not be allowed to pass unnoticed, as, he submitted, it was not correct. As a matter of fact, whenever, during the last ten years, the Justices had revised the assessment on house property, an increase to the municipal revenues had been obtained, thereby distinctly proving that the value of house property in the town was not decreasing, but increasing. It was apprehended that the opening of the Howrah bridge might lead to a reduction in the value of property in the town, but he was informed on the best authority that that was not the case; and that owing to a water-supply and other improvements in the town, persons formerly residing in Howrah were giving up their houses and living in Calcutta.

Much had been said about the inequitable distribution of the cost of the fire-brigade as between Calcutta and the suburbs, especially by the hon'ble member opposite (Baboo Juggadanand Mookerjee). Perhaps the hon'ble member was not aware that nearly all the present block of the fire-brigade had been paid for from the municipal revenue of Calcutta. It was true that by the Act the fire-brigade was placed under the control of the Justices, but as a matter of fact the Justices had delegated the complete control of the brigade to the Commissioner of Police, who was also in charge of the police of the suburbs. This was a reasonable arrangement, as it resulted in the police force being called into requisition whenever a fire occurred. He thought this was the most economical arrangement both for the town and the suburbs.

His hon'ble friend opposite (Mr. Eldridge), who remarked as to the inequitable arrangement by which the proprietors of jute warehouses were called upon to pay the whole cost of the fire-brigade, was slightly in error. He had forgotten that by the existing law insurance companies, who were most interested in the maintenance of a fire-brigade, had, by Section 26 of the Act, to contribute to the cost at the rate of one-half rupee for every ten thousand rupees value of property insured. Consequently, according to the existing arrangement, the cost of the fire-brigade was partly borne by the insurance companies. This he believed, nay he was certain, was the principle adopted in London, where insurance companies were compelled to contribute towards the maintenance of the fire-brigade. It was by following the English Act that this clause was introduced in Act II of 1872.

No doubt all the suggestions made by honorable members would be duly considered in Select Committee. He hoped therefore the Council would allow the

Bill to be read, and then direct the Select Committee to consider its clauses, and also such other modifications of the Act as might be considered by them necessary.

THE HON'BLE MR. RIVERS THOMPSON said, with His Honor the President's permission he wished to make a few remarks. The hon'ble mover of the Bill scarcely anticipated, when he took charge of it for the purpose of relaxing one of the restrictions imposed on the grant of licenses to the owners of jute warehouses, that so many other points of discussion would arise. Most of the speakers who had addressed the Council had suggested different proposals regarding the amendment of Act II of 1872; and if the hon'ble member was to take all these proposals into consideration, and if all of them were, upon consideration by the Select Committee, likely to be carried, MR. THOMPSON thought it would be advisable that the whole law on the subject should be included in one Act instead of two,—a course which would secure much greater convenience. And if, in the wisdom of the Committee, it should be determined that the suburbs should, for the purposes of the Act, be amalgamated, as now, with the town of Calcutta, he would suggest that it should also be considered whether the Howrah fire-brigade should not also be amalgamated with the suburbs and Calcutta, so as to have one fire-brigade for the whole. At present Howrah, to which Act II of 1872 was extendible, had a separate fire-brigade of its own, and that without the Act having been extended to that place. The expenses of the Howrah fire-brigade were paid out of the municipal fund of that place; and it had only lately come to the notice of the Government that they had a fire-brigade, the expenses of which were paid out of the funds of the Municipality. MR. THOMPSON would suggest, therefore, that if the management of the fire-brigade for the joint use of Calcutta and the suburbs was to remain with the Justices of the Peace for Calcutta, the Howrah fire-brigade should be amalgamated with it.

HIS HONOR THE PRESIDENT inquired whether it would be competent for the Select Committee to make such extensive changes as those suggested by the hon'ble member who had just spoken.

The HON'BLE MR. DAMPIER said he did not think it would be within the competence of the Select Committee to take into their consideration such an enlargement of the Bill, unless the Council made it an instruction to the Committee to do so.

The HON'BLE THE ACTING ADVOCATE-GENERAL observed that it would be the duty of the Select Committee to consider the Bill which was referred to them. They could not go beyond the four corners of the Bill.

The HON'BLE MR. HOGG said he understood the meaning of the Hon'ble Mr. Thompson to be that the Act of 1872 should be repealed and one Act passed, which should include the provisions of this Bill.

The HON'BLE MR. RIVERS THOMPSON explained that if all the suggestions that had been made were considered and approved by the Select Committee, it would make the Bill such a large Bill that he thought it would be better to consolidate the whole law on the subject.

HIS HONOR THE PRESIDENT said he understood that this was a Bill to amend a particular Act. The Hon'ble Mr. Thompson proposed that the Select

Committee who should be appointed to consider this Bill should include in it another Act, which was not now mentioned in the Bill at all. His Honor ventured to doubt whether it was in the power of the Select Committee to alter the Bill referred to them for report in the way that had been suggested.

The Hon'ble Mr. Rivers Thompson observed that the Jute Warehouse and Fire-brigade Act was mentioned in Section 11 of the Bill before the Council.

The Hon'ble the Acting Advocate-General thought that Act II of 1872 did not cover Howrah, unless it was extended to that place; therefore Howrah was at present out of the Act altogether.

The Hon'ble Mr. Eldridge inquired if the Hon'ble Mr. Thompson was sure that Act II of 1872 had not been extended to Howrah. Mr. Eldridge thought the hon'ble member must be mistaken in declaring that the Act was not in force there, as Mr. Eldridge had heard strong representations made from people who had jute warehouses and screwhouses in that town. In the very letter before the Council, sent up by Messrs. Ralli Brothers, and sixty others whose names were not printed, they said:—

"A native was recently fined heavily at Howrah (where the Act appears to have been carried out most stringently) for drying a cargo of jute which had been wrecked, in an open garden belonging to an uninhabited house at Ghoosery, where had it all gone on fire, no possible harm could have resulted to any one. In this case it was not the spirit of the law that was carried out, but the letter of it, and many other equally hard cases have occurred."

The Hon'ble Mr. Dampier said he did not see why the Council was called upon to take any notice of Howrah. There was no mention of Howrah in the Act, except that as to the Municipality of Howrah the Act should commence and take effect from such date as the Lieutenant-Governor might direct by notification published in the *Calcutta Gazette*. If the Lieutenant-Governor thought that the Act ought to be brought into operation in Howrah, he had only to make an order extending the Act to that town, and thenceforth whatever was made applicable to Calcutta and the suburbs by the present Bill would become applicable to Howrah. Therefore he did not see why the Council were called upon to notice Howrah specially in the Bill.

The present motion was that the Bill should be read in Council. To that motion he supposed there would be no objection. Then, in the discussion of the Bill, several new points had arisen. The next motion would be to refer the Bill to a Select Committee. The discussion had brought out several points which, as the thing stood, it would not be within the competence of the Select Committee to take up; but it appeared to him that it would be within the competence of the Council to direct the Select Committee, in addition to the provisions contained in the Bill, to consider and report upon the points that had been raised in the discussion. He therefore begged to suggest that the motion now before the Council, that the Bill be read in Council, be put, and that the further progress be then deferred, in order that the suggestions that had been made might be well matured and put into form, with the view, at the next meeting, that the Council should lay down lines as to the point or points that should be taken into consideration by the Committee.

The Hon'ble Mr. Hogg suggested that it be an instruction to the Select Committee to consider the suggestions which had been made in Council, and the

expediency of repealing Act II of 1872 and passing one consolidated Act. It seemed to him that most of the suggestions which had been made were of a technical character.

His Honor the President said it appeared to him that the best course would be for the Hon'ble Mr. Thompson to move a specific amendment or amendments as soon as the Bill was read in Council. The subject of the amendment would be that this Bill and the existing law be incorporated and made into one consolidated Act relating to jute warehouses.

The Hon'ble Mr. Rivers Thompson said he thought the usual course was that, on the motion to read a Bill in Council, the principle of the Bill was discussed, and different suggestions were made as to various points in connection with it. Then, on the nomination of the Select Committee, it considered the Bill as it stood, and all the suggestions that had been made were brought to its notice. It might be made an instruction to the Select Committee to say whether, in the event of their adopting the suggestions that had been made, it would not be a good course to amalgamate all the amendments that were proposed and frame one consolidated Act on the subject. If it turned out that the Select Committee rejected the suggestions that had been made, and the Bill remained a small one, as it now was, there would be no necessity to amalgamate it with Act II of 1872. But if these suggestions were carried out, he thought it would be a wise course for the Select Committee to consider whether the law should be consolidated.

His Honor the President said the question before the Council seemed to be a matter of form more than anything else. It appeared to him doubtful whether it was regular for the Council to instruct a Select Committee to alter the whole frame-work and substance of a Bill about to be read in Council.

The Acting Advocate-General said he was not aware of what had been the practice of the Council. The difficulty he felt as to the Hon'ble Mr. Thompson's motion was this:—It was admitted that Act II of 1872 did not apply to Howrah, and a Select Committee had no power to consider any other proposals than what were contained in the Bill which was referred to them: those proposals did not form a part of the frame-work of the Bill.

His Honor the President said he thought the more regular course would be for the Hon'ble Mr. Thompson to move an amendment, and after that the Select Committee could be instructed to consider the several suggestions that had been made. The present Bill was one of about ten sections. If the question of consolidation was raised, there would be at least thirty-five sections added to the Bill from Act II of 1872, and probably some others; so that what was now a Bill of small dimensions would become a Bill of very considerable magnitude, which was altogether a different thing from the proposal before the Council.

The Hon'ble the Acting Advocate-General said that considering the urgency of the representation made by the owners of jute warehouses, he thought this Bill should be passed as expeditiously as possible, and that would be a reason for not entertaining at present the suggestion which had been made for the enlargement of the Bill.

The Hon'ble Mr. Eldridge said he thought it would be found that a great number of the suggestions which had arisen during the debate would not prove so formidable in the Select Committee as was anticipated by the hon'ble member on his left (Mr. Thompson). The hon'ble mover of the Bill had proposed that the conditions to be imposed on the granting of licenses for jute warehouses should not be contained in the law, but should be regulated by rules to be passed by the Lieutenant-Governor. The hon'ble member who spoke next thought that the conditions should be specified in the law. That would be a question for the consideration of the Select Committee. One other suggestion that had been made was as to the fees to be levied for the registration of the names of occupiers of jute warehouses. While supporting the hon'ble mover in his proposal to repeal the objectionable clauses in the present Act, the only suggestion that Mr. Eldridge had made was that the scale of fees for the licensing of jute warehouses should be reduced, as he thought that the rate at which the fees were now fixed was too high. There had been a great deal of discussion over other matters in connection with the Bill, which he thought it would perhaps have been better to have postponed till the Bill passed the Select Committee. His only reason for making the suggestion which he had mentioned was that he would not have another opportunity of speaking in the Council. His opinion was that the Select Committee might report on this Bill in such a way that the law might be passed very rapidly.

The Hon'ble Mr. Rivers Thompson said if His Honor the President would allow the Bill to be read in Council, he did not think he should propose any amendment now, but would leave it to the sense of the Select Committee whether there should be any consolidation of the law. He was not prepared to propose any amendment which might cause delay.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Schalch, the Hon'ble the Advocate-General, the Hon'ble Mr. Dampier, the Hon'ble Baboo Doorga Churn Law, and the mover.

REALIZATION OF GOVERNMENT ARREARS.

The Hon'ble Mr. Dampier presented the report of the Select Committee on the Bill for the realization of arrears in Government estates. The Bill, as amended by the Select Committee, had, he said, been for some time in hands of the members, and he proposed that the report of the Committee be taken into consideration in order to the settlement of the clauses of the Bill. The object of the Bill was to make the procedure now applicable to the realization of arrears due from tenants who held transferable rights in Government estates also applicable to arrears due from tenants who had no such rights. The Select Committee had made two alterations in the Bill before the Council. In the description of arrears to which the certificate procedure was made applicable, they had included arrears due on account of "interests in pasturage, forest rights, fisheries and the like," as well as mere rent of land. The object of this was obvious. They had also divided the Bill into two clauses: the first related to the realization of arrears from tenants of Government estates proper, and in the second clause they had made separate provision

for the realization of arrears due to the Collector on estates which he managed in trust for private individuals. As the Bill originally stood, it purported to make the certificate procedure applicable to arrears due to any manager appointed by the Government; but in Select Committee it was found that this would not be consistent with the existing law as regards arrears due from tenants with transferable rights. Under a section of the existing Wards' Act, tenants on Wards' estates were subject to similar procedure as those in Government estates; but it was specially provided that only in cases in which the Collector managed directly without the intervention of a manager, could he make use of the summary certificate procedure. Therefore the Committee simply followed the model of the existing law; and in estates managed under trust, they proposed that the summary procedure should only be applicable where the Collector himself managed the estates direct, and not where he appointed a manager. An appointed manager would have to sue for the recovery of arrears. MR. DAMPIER now moved that the Report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to, and the clauses of the Bill were passed without amendment.

His HONOR THE PRESIDENT observed that as the Bill would not be passed that day, there would be time for honorable members to give notice of any amendments which might occur to them.

The Council was adjourned to Saturday, the 30th instant.

Saturday, the 30th January 1875.

Present:

His HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble V. H. SCHALCH,
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble RIVERS THOMPSON,
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble C. E. BERNARD,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYAD ASHGHAR ALI DILER JUNG, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The HON'BLE MR. DAMPIER, at the request of His Honor the President, postponed the first two motions which stood in his name, viz., the motions for the

further consideration and the passing of the Bill to provide for the voluntary registration of Mahomedan marriages and divorces.

REALIZATION OF GOVERNMENT ARREARS.

The HON'BLE MR. DAMPIER moved that the Bill for the realization of arrears in Government estates be passed.

The HON'BLE BABOO KRISTODAS PAL said when this Bill was introduced in Council, he had no opportunity of discussing its principle, but he had the honor of serving on the Select Committee upon the Bill, and of considering the provisions contained in it. He did not propose to offer any objection to the passing of the Bill, but he thought it his duty to draw the attention of the Council to the tendency of one of its provisions. The hon'ble mover of the Bill, in introducing it, had pointed to the necessity of supplying an omission in Act VII of 1868 passed by this Council. He said that the Collectors and officers of the Government had from 1797 exercised the power of summarily realizing rent from tenants in Government estates, and that when Act VII of 1868 was passed it was by an oversight that section 25 of Regulation VII of 1799, which contained the law on the subject, was repealed. The hon'ble gentleman was quite correct, and BABOO KRISTODAS PAL agreed with him, that the same facility should be given to the Collector to realize rents from ryots of Government estates having non-transferable tenures that he possessed in respect of ryots who held tenures with transferable rights. But BABOO KRISTODAS PAL need not remind the Council that the old law proved innocuous in the then system of management of Government estates, inasmuch as Government then used to manage its estates through farmers, who dealt directly with the ryots, and who were subject to the ordinary rent-law in recovering their dues. The policy of the day was, however, different: the Government did not now farm out its estates, but held them under *khas* management through the intervention of its own officers. It was, therefore, deemed necessary to include, under the certificate procedure for the recovery of rent, non-transferable with transferable tenures. So far so good. But it was proposed in the Bill to extend the power to the Collector in charge of Wards' estates. When the Bill was considered in Select Committee, he was doubtful whether it would apply to such estates; but the hon'ble mover explained that it was so intended. Now, when the Wards' Act was revised and consolidated in 1870, this provision was not included in that Act. It was therefore fairly open to question whether this power should be given to the Collector in charge of Wards' estates. He readily admitted that the Collector in charge of Wards' estates was *ipso facto* in the same position as when in charge of Government estates. But the anomaly would appear when you considered that the Collector, as manager of a Ward's estate, when that estate formed part of a joint and undivided estate, would be subject to one law of procedure for the recovery of rent, and the other co-parceners would be subject to another, though the different fractions composed an integral whole. The same estate might be held by a number of persons, and because the Collector by an accident came to be the manager of a portion of the estate,

he was armed with more summary powers than the other co-sharers of that estate. This, BABOO KRISTODAS PAL submitted, was an anomaly. Then the Collector might farm out the estate: the farmers, who were responsible for the punctual realization of the revenue, were not vested with that privilege. They must go to the Civil Court in the regular way to realize the rents; but the Collector-manager was placed in a different position. This also was anomalous. It was, BABOO KRISTODAS PAL observed, one thing to arm the Collector with summary powers when he was the manager of Crown property, and another thing when he was the manager of private property. BABOO KRISTODAS PAL was aware that, under the law, an estate which was under the management of the Collector was exempt from the operation of the sale law for default of revenue; but this exemption was a necessary and natural sequence of that condition of things. The Collector being in charge of an estate, it could not be just to put up the estate in his charge to sale for default which might arise from his own laches or from circumstances which were within his control. But it was worthy of consideration whether, when it was deemed necessary to arm the Collector with such summary power for the realization of rent, notwithstanding the prestige and influence of his official position, a private landlord was not entitled to the same facility for the realization of his dues. This question, BABOO KRISTODAS PAL was of opinion, was a logical sequence of the power vested in the Collector by this Bill. A private landlord was under greater disadvantages than the Collector-manager of an estate could ever be. He need hardly remark that the present law for the recovery of rent was attended with many inconveniences and hardships. A suit in the Civil Court was harassing, tedious, and expensive; and it might well be asked whether the same facilities should not be given to the private landlord which it was deemed necessary to give to the Collector-manager of an estate for the realization of rent.

In making these remarks, he simply wished to draw the attention of the Council to the anomaly of the provision as regards the power given to the Collector-manager of estates, and to the tendency and effect which this law might have upon landlords generally. He did not wish to oppose the passing of the Bill, but he considered it his duty to impress upon the Council the probable effect it would have upon the landed classes.

The HON'BLE MR. DAMPIER said he had only to correct what, if he understood it rightly, was a misapprehension on the part of his hon'ble friend. He understood him to say that when the Wards' Act was passed in 1870, the procedure which was now known as the certificate procedure was not mentioned, even as against tenants who held transferable rights. But under the Wards' Act, if his hon'ble friend would turn to Section 75, he would find that—

"Farmers and others holding tenures in estates in charge of the Court direct from the Collector, shall be subject to the same rules, regulations, and Acts as are applicable to other persons holding similar tenures and interests under Collectors of the land revenue; but when the farm is held from the manager, these rules, regulations, and Acts, shall not apply."

Thus that Act placed the tenants in Wards' estates which were managed by the Collector direct, and not through the intervention of a manager, precisely on all fours with tenants in Government estates proper. Independently of the

present Bill, the effect of the existing law was that in Wards' estates managed by the Collector direct (as in Government estates proper), a tenant who held transferable rights was subject to the certificate procedure, while a tenant who held a non-transferable holding was not subject to that procedure: in fact Wards' estates, when managed by the Collector direct, were in precisely the same position as Government estates.

The second point advanced by the hon'ble member was that when the Collector managed one share in a Ward's estate, while other shares were held by other proprietors, who managed it in their own interests, it was anomalous that the Collector should have summary powers of realizing rent while the other sharers had no such powers. There certainly was an anomaly to the same extent as in all cases in which the Collector, on behalf of Government, was vested with more summary powers of realizing rents than any private landlord could exercise; but the anomaly was adopted by the Council in the Certificate Act VII of 1868. The principle on which it was based was that whatever bias the Collector and his subordinates might have in the matter of realizing rents and dues for Government was not a personal, but a departmental bias, whereas the bias of the private landlord in collecting rents from his ryots sprung from personal interest. MR. DAMPIER thought that the distinction was clear, and at any rate it had been accepted generally by the Council in Act VII of 1868, and was by no means novel elsewhere.

The HON'BLE MR. BERNARD said he would like to say one or two words with respect to the objections which had been taken by the hon'ble member on his left (Baboo Kristodas Pal): these seemed to be two-fold. First, that it would be hard upon the ryot that there should be a more summary remedy against ryots in Government estates than there was against them in private estates; secondly, that it was hardly fair upon the zemindars that one of their brethren who happened to be a minor should have a quicker remedy than themselves. In the first place, it was only fair to say that, as far as the experience of the last two or three years had gone, the system of managing Wards' estates by the Collector, instead of letting them out to contractors, had answered. This system was introduced, as His Honor the President knew, about three or four years ago, and was at the time much challenged. He recollected that the managers of the larger Wards' estates, and not only the managers, but some of the revenue officers connected with the management, were very much against the new system; and they much preferred the old plan of letting out villages for five or seven years to outsiders. First, they said that the direct system of collecting revenue would harass the ryots; next, they said that the rents would never be collected. These objections were urged by persons who really understood zemindary work, and among others by the gentlemen who were then managing the great Durbhunga estate. MR. BERNARD had recently visited many parts of that estate in Tirhoot, Purneah, and Bhagulpore; the officers who were in charge of the estate were the same now as then, and they all said that the system had answered very well so far as they knew. They were in the best possible position to know whether the rents were collected, and they thought that by the new system the relation

of the zemindar or Court of Wards was very much nearer to the ryot, and the ryot to the zemindar, than under the old system. He thought, therefore, it might fairly be contended that the new system had proved advantageous, and had worked well.

Unfortunately, as things now existed, it was very difficult to find out the opinion of ryots. But so far as it was known to the managers of Wards' estates, it might be said that the ryots preferred the system of paying direct to the manager at the raj zemindary, rather than the old system of paying to the contractors.

Then the second objection that had been taken was that it would be a hardship to the zemindars who were managing their own estates that their brother proprietor should have a more summary remedy than themselves. The hon'ble member had told the Council that the present system, whereby the zemindars collected their rents through the intervention of the Civil Courts, was harassing, tedious, and expensive. No doubt his hon'ble friend was in an excellent position to judge. We had heard, within the last four or five years, something about the difficulty in collecting rents, and we had been told that the law for the collection of rents required revision. If the present law did make it difficult for the zemindar to collect his rents, and if that law required revision, he did not see that the harassment, expense, and difficulty upon the zemindar was any reason why the Court of Wards, where it managed directly and in the face of the public, with all its books more or less accessible to the public, should not have the advantage of realizing its rents direct as the Government did from its ryots. As the hon'ble mover of the Bill had explained, when the Collector, on behalf of the Court of Wards, gave over the management of Wards' estates to somebody else, then the farmer would have only the old remedy against the ryots, in the same way as zemindars now had.

The Hon'ble the Acting Advocate-General would say one or two words on the question before the Council. It had been pointed out by the hon'ble mover of the Bill that a measure providing for the certificate procedure existed under the Wards' Act. The present Bill was simply to extend that principle to cases of non-transferable tenures—or, in other words, to enable the Collector managing a Ward's estate to obtain a sale certificate which would have the force of a Civil Court's decree in that particular case. It was simply to give the Collector managing a Ward's estate the privilege of exercising the same power as regards non-transferable holdings as he had as regards transferable holdings. The distinction would be this, that those who had non-transferable tenures would not have their tenures sold; but the remedy acquired against personal and movable property would be the same in both cases.

With regard to the anomaly respecting co-sharers in Wards' estates, that was an anomaly which existed at the present time. This Bill did not introduce it in any way. It was merely an anomaly in name, and not one in reality. In this country rents were collected in fractional shares; and although the whole rent was paid by the same ryots, still, so far as the ryots and the zemindars might be concerned, this Bill would make no alteration. It

did not appear to him to be a case in which these fractional shares should be considered.

He thought that the objection fell to the ground, and that the motion of the hon'ble mover did not appear to be open to any objection. It was merely an extension of the remedy which the Collector had against one class of tenants, to another class. He could not see why one class of tenants should have an immunity which the other class had not.

The HON'BLE MR. DAMPIER wished to say one word more, so that the Council might not overlook anything in passing this Bill. Much had been said as to this Bill providing for the extension to tenants without transferable rights of a principle now in force against tenants who possessed such rights. But he must point out distinctly that with regard to estates (other than Wards' estates) which were managed by the Collector direct in trust for private individuals, the Bill provided something more than this.

In estates so circumstanced, the certificate procedure had not yet been made applicable to any class of tenants. Legislation had not touched them at all. So far, then, the Bill provided for the introduction of a procedure which was new to the limited class of estates. But the position which MR. DAMPIER took up was that when once this procedure was accepted as applicable against ryots with non-transferable interests in Wards' estates, there was absolutely no room left for discussion as to whether it should be applied to estates other than those of Wards, which were managed direct by the Collector. When this Bill was passed, a tenant in an attached estate managed direct by the Collector, if he had a non-transferable tenure, would be liable to be proceeded against by the certificate procedure; but if he had a transferable tenure, he would not be liable to be so proceeded against, the law never having extended that procedure to them. The result would be that in such estates the tenant with the weaker and lower degree of right in his holding, would be less privileged in this respect than one who possessed the higher and transferable interest.

The motion was then agreed to, and the Bill passed.

RECOVERY OF GOVERNMENT ADVANCES.

The HON'BLE MR DAMPIER presented the report of the Select Committee on the Bill for the summary realization of loans of money and grain due to Government. When the Select Committee proceeded to look into this Bill, it appeared that there was not sufficient information before them as to the means which the Collectors had of satisfying themselves as to advances having been made, as to the persons to whom they had been made, and as to whether they had been repaid. The Select Committee therefore summoned two witnesses, namely the Collector of Sarun and Mr. MacDonnell, the sub-divisional officer, who had so much distinguished himself at Durbhunga, and ascertained from them the exact procedure which had been followed in making these loans of grain and money. In Sarun the agency of planters had often been made use of to make the loans; and in the Durbhunga sub-division, which the Committee were informed might be taken as a type of what was done generally in East Tirhoot, advances were made by circle officers, who were in the position either of Covenanted Civilians or of Deputy Magistrates. Bonds were taken both

when grain advances were made from the golas and when money was paid over, and these bonds were afterwards sent in to the Collector or the sub-divisional officer, to be kept in his custody. In the bonds that were taken in Durbhunga and East Tirhoot, the instalments by which the money was to be repaid were distinctly specified. In Sarun there was no such specification: not only were bonds taken, but careful registers were prepared in which each advance was posted up; the name of the person receiving the advance, and the name of the surety being entered, and provision was made for entering up the instalments which might be repaid. Then the witnesses informed the Select Committee that the procedure they were adopting to recover these advances was this: just before the time when the first instalment fell due, notices were to be issued to the ryots. In Sarun these notices called upon the ryots to come in and make an arrangement as to the instalments in which they could repay the advance, as the time had now come for repayment. It was obvious that here, before any proceeding was taken against, or pressure put upon the ryot, the issue of these notices afforded the ryot an opportunity to make any objections he might have to make. In Durbhunga, where the instalments were recorded in the original bond, the notice to the ryot intimated that a certain tehsildar was appointed, or was about to be appointed, to realize advances, and called upon each ryot to pay the amount due by him to the tehsildar. The tehsildar would send in to the Collector a list of those who did not pay in accordance with this call, and the Collector would then call upon them individually and hear what they had to say. That was the procedure which was now in train independently of the present Bill; and MR. DAMPIER might here mention that although the instalments of repayment were distinctly stated in these Tirhoot bonds, yet, under instructions from the Government, the officers concerned had been directed to give the ryots more time than that within which they were strictly bound by their bonds to repay. The time of recovery had been extended to beyond the main crop at the end of 1875.

A petition had been presented by the British Indian Association, which had not been before the Select Committee, but the arguments urged in it had been pressed before the Committee by the hon'ble member (Baboo Kristodas Pal) who represented the views of that body, and in fact MR. DAMPIER thought all the points urged in the petition had received the consideration of the Committee. No doubt the hon'ble member would lay his views before the Council, and MR. DAMPIER should therefore reserve any remarks he might have to make on those points until the hon'ble member had done so. The form in which the Committee had recommended the Bill to be passed was essentially the same as that which had been referred to them for report. The only material alteration which they had made was to enable one individual ryot, out of a number of ryots who had jointly stood security for one another, to proceed summarily against any person for whom he had paid and who refused to pay his share.

The Council was adjourned to Saturday, the 6th February.

By subsequent order of THE PRESIDENT, the Council was further adjourned to Saturday the 13th February 1875.

The Hon'ble Mr. Dampier.

Saturday, the 13th February 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. G. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. H. Brookes,
and
The Hon'ble Baboo Kristodas Pal.

INSPECTION OF STEAM-BOILERS AND PRIME MOVERS.

The Hon'ble Mr. Hogg moved that the Bill to amend Bengal Act No. VI of 1864 be read in Council. When he asked permission to introduce this Bill, he brought to the notice of the Council that the use of machinery being greatly on the increase in Calcutta, it seemed desirable to frame regulations by which some control should be had over persons who were placed in charge of the boilers and prime movers; more especially as upon inquiry it was found that the machinery belonging to the poorer classes were constantly placed in charge of persons who had no practical knowledge of the working of boilers or engines. If the Council would refer to Section 6 of Act VI of 1864, passed by this Council, they would see that there were certain conditions under which the Lieutenant-Governor or any person authorized by him in that behalf might revoke any certificate granted for the working of a boiler. The way Mr. Hogg proposed to deal with the subject before the Council was to repeal the whole of Section 6 of Act VI of 1864, and to re-enact it with the addition of a clause providing that the Lieutenant-Governor, or any person authorized by him, might, in addition to the conditions stated in that section, revoke a certificate when it was found that a boiler or prime mover was not in charge of a person competent to have charge of the same. Mr. Hogg had treated the subject in that manner because he found that in many cases the persons placed in charge were illiterate men; and it therefore seemed difficult to impose upon them any sort of examination previously to their being placed in charge, whereby the inspecting officer would be able to ascertain their qualifications and issue certificates. The plan he proposed seemed to be the simplest one that could be followed, and would, he believed, effect the object in view.

The Hon'ble Baboo Kristodas Pal said he wished to preface the few remarks which he had to offer on this Bill with an observation, which he trusted the Council would receive with indulgence. He was a new-comer to this assembly, and was not familiar with its practice and procedure. But he believed he was

correct when he said that in all deliberative bodies it was usual to circulate, previous to discussion, the papers relating to subjects on which projects of legislation were based. It was indeed most inconvenient to discuss the merits of a measure without knowing the reasons upon which it was founded; the circumstances which might have led to its inception; and the history of the different stages through which it had passed before it had obtained the maturity of a draft Bill. With reference to the subject-matter of the present Bill, he was sorry to observe that, beyond the half-a-dozen lines in the shape of Statement of objects and reasons from the hon'ble mover, the Council had not a scrap of paper before it to show whether there existed any necessity for the measure or not. He believed that if such a measure were introduced in the English Parliament, the evidence of experts would have been taken before any decisive action would have been adopted. The executive Government, if he was rightly informed, had practically followed that course by inviting opinions from competent persons on the subject; but these opinions had not been laid before the Council, though it had been asked to pass the Bill. The Council was utterly in the dark as to whether, in the opinion of the persons consulted, there was good and valid reason for a measure of this kind. In another capacity he happened to come into possession of the papers on the subject; and from those papers it appeared that in 1873 the Government appointed a Commission to inquire into the working of the Steam-Boilers' Act in the town and the suburbs. Mr. Horace Cockerell, who was President of that Commission, stated that—

"In flour and soorkey-mills worked by native proprietors, common coolies, entirely unacquainted with the working of the steam-engine, are placed in charge of the machinery; that the mills are frequently kept working day and night without a change of men, and that the practice of working mills at night is greatly on the increase."

He was also of opinion that—

"The supervision over steam-boilers in the town and suburbs cannot be considered complete and effectual unless we take measures to ensure that the working of the machinery is placed in the hands of competent persons."

He believed from that report originated the present measure. But from inquiries which he had been able to make, he found—and he believed the hon'ble mover of the Bill would bear him out in the statement—that in boilers worked by natives there had not occurred a single accident. Some of those boilers had been worked for about twenty years or more; and however ignorant the men employed might be of the general principles of science, they were experienced in their work. He did not deny that in the abstract it was desirable to employ men well versed in the principles of science and in the theory of conducting machinery; but when we got practical men, experienced in their business, he thought it was quite sufficient for all practical purposes: and the best proof of the efficiency of these men was that there had been no accidents. A few accidents, it was true, had occurred with machinery in Calcutta and the suburbs; but in those cases the boilers and prime movers were under the superintendence of European gentlemen or workmen. The natives of the country were just

beginning to learn the use and advantage of the means and appliances placed at their disposal by Western science; and this, he submitted, was not the moment to fetter or clog their efforts by restriction or repressive legislation. The Government ought rather to encourage, consistently with public safety, the use of steam power in the manufactures of the country. It ought to take a broad view of its own position and of the duty it owed to the people. Holding that view, and remembering that there had been so few accidents, and that self-interest was a sufficiently powerful motive to keep the men engaged in the work on their guard, he thought the Bill might not improperly be called a piece of unnecessary legislation.

The present Bill was practically, as had been stated by the hon'ble mover, a re-enactment of Section 6 of Act VI of 1864. The only clause added was that a certificate might be revoked if the boiler or the prime mover was not "in charge of a person competent to have charge of the same." He must confess that the hon'ble mover had drawn up that provision with very great care. He had not followed the recommendation contained in the report of Mr. Horace Cockerell, who suggested that only certificated men should be permitted to be employed. If that suggestion had been carried out, a particular class of men would have a monopoly, and the result would be a considerable rise in the wages of the men employed to manage steam-engines. Now, hon'ble members were no doubt aware that success in the employment of steam power in Indian manufactures was chiefly dependent upon economic management; and if the wages of the men employed by the masters to conduct the machinery were in ordinately high, the result would be that most of the soorkey-mills would have to be closed. Surely, the Government did not contemplate such an untoward result. BABOO KRISTODAS PAL was therefore of opinion that the hon'ble mover had shown much consideration in framing this provision; but it appeared to him that the provision in question was open to other objections. It left it entirely to the discretion of the Inspector to declare a man competent or incompetent: in fact it threw great responsibility upon the executive officer. He did not think that this wide discretion should be left to the executive officer, particularly when there was no necessity for the measure. He thought that the general penal law of the country was quite sufficient to meet the object aimed at by the Bill. If the Council would refer to Section 287 of the Penal Code, they would find that the present law was amply sufficient. That section provided as follows:—

"Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to SIX months, or with fine which may extend to one thousand rupees, or with both."

Now, he submitted that the Penal Code sufficiently met the cases contemplated by the Bill. He believed that about two or three years ago a case was tried by the Bombay High Court under that section, and the party concerned was punished: so when the general penal law of the country was

sufficient to meet the requirements of the public, he did not think there existed any necessity for a measure of this kind.

The HON'BLE MR. DAMPIER said he had been prepared to suggest, for the consideration of the Select Committee, if the Bill should be referred to a Committee, an objection which the hon'ble member who had last spoken had just mentioned, but had himself answered, that it was leaving too much to the discretion of the Government to provide merely that the certificate should be withdrawn if the man found in charge of the engine was not competent to manage it. The Bill gave no definition of competency. It had occurred to MR. DAMPIER that it would be better to have some definition, and that the natural means of defining the degree of competency would be by requiring a certificate to be taken out. He should have made the suggestion in the interest of the owners of machinery; but if, as appeared from the speech of the hon'ble member who spoke last, such a provision would not be agreeable or palatable to them, there would be no reason for pressing it further.

The HON'BLE MR. HOGG said that the hon'ble member on his left (Baboo Kristodas Pal) was correct in saying that the action of the Government was taken on the report of Mr. Horace Cockerell, who brought to the notice of the Government that boilers and prime movers in the town were, as a rule, placed in charge of persons utterly unqualified to take charge of them. As that report was based on statements made by a very experienced officer, Mr. Walker, who was for a long time the Inspector of Boilers in the town, the Government addressed the Locomotive Superintendents of the East Indian Railway and the Eastern Bengal Railway, the Trades' Association, the Chamber of Commerce, and other public bodies, and some private individuals who had special knowledge on the subject.

All these public bodies and gentlemen were strongly in favour of MR. COCKERELL'S proposal being adopted by the Government. Some native gentlemen were also consulted, but they were against the measure. There was, then, a concurrence of opinion of all the European gentlemen best qualified to take an impartial view of the matter, and they advised the Government in favour of having some supervision over those who might be entrusted with the working of steam-boilers. On the other hand, the only persons who were averse to the proposal, were a few native gentlemen, who had not the same means or opportunity of arriving at a fair conclusion as those who supported the Government. He was certainly unable to agree with his hon'ble friend that it would be wise to await the occurrence of an accident before taking any action in the matter. The Bill as framed was intended to obviate as far as possible any inconvenience upon the proprietors of machinery. He quite agreed that it would be a very great inconvenience if an Act were passed compelling the persons placed in charge of steam-boilers to submit to an examination and obtain certificates. It would be difficult to test their qualifications, and we should have to fall back on the employers and ask them how far their men were qualified. He was certain that it was not the intention of the Government to work the Bill in a harsh manner, and the only object sought was to guard against boilers being left in charge of incompetent persons.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the HON'BLE MR. DAMPIER, the HON'BLE BABOO KRISTODAS PAL, and the mover.

RECOVERY OF GOVERNMENT ADVANCES.

The HON'BLE MR. DAMPIER moved that the Report of the Select Committee on the Bill for the summary realization of loans of money and grain due to Government be taken into consideration in order to the settlement of the clauses of the Bill. He had the honor to present the Report of the Select Committee with some remarks at the last meeting of the Council.

The HON'BLE BABOO KRISTODAS PAL moved the amendments of which he had given notice, and which were as follows:—

In clause 1, for lines twelve, thirteen, fourteen, and fifteen, read the following:—

"And whenever any arrear of such demand shall remain unpaid, the Collector or other officer to whom such demand is payable shall give to the Moonsif, within whose jurisdiction such demand is payable, a notice in writing in the form in Schedule (B) annexed to the said Act, and such Moonsif shall make under his hand a certificate of the amount of such arrear so remaining unpaid in a form similar to that in Schedule (A) annexed to the said Act, and shall cause the same to be filed in his office, and every certificate so made shall be deemed to be a certificate made in pursuance of section nineteen of the said Act."

Omit the last paragraph.

In clause 2, lines twelve and thirteen, *for* "Collector of the District in which," *read* "Munsif within whose jurisdiction." In line seventeen, *for* "the Collector," *read* "such Munsif."

Omit the last paragraph.

After clause two, insert three fresh clauses, as follows:—

"For the purposes of this Act, the Munsif, as mentioned in the two last preceding sections, shall have the same and the like powers and duties as are given to, and imposed on the Collector by sections twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight of the said Bengal Act No. VII of 1868."

"Any Munsif making a certificate in accordance with sections one and two of this Act, may, in his discretion, order in such certificate that the amount payable be paid by instalments."

"Every order made by a Munsif in accordance with the provisions of this Act shall be final."

He believed there was no one in or out of this Council who could take the slightest exception to the objects of this Bill. The Government came forward most nobly to help the ryots at a time when they were threatened with starvation and death, and when assistance to them was not available from any other quarter. The debt which the ryots owed to Government he might say was a sacred one; and he was glad to find, from the reports which had been received from the district officers, that they did not apprehend the slightest difficulty in realizing it. In fact, it appeared from some of the papers that portions of the loans had already been recovered in some districts. The question before the Council was whether, if any suits should arise in connection with these loans, the procedure for the trial of these suits should be that which was laid down by Act VII of 1868, or any other procedure equally or still more summary. Now, with regard to the summary character of the procedure, he

believed that there was no difference of opinion. The Select Committee were agreed on that point. They were unanimous that the procedure should be sharp and summary. The question simply was whether the Collector or the Munsif should be the trier of the suits. It was BABOO KRISTODAS PAL'S misfortune to differ from his colleagues in Committee upon the last point. The majority of the Committee were of opinion that the Collector would be the proper person to try the suits. He, however, felt that the regularly constituted tribunals of the country would be the proper courts for the trial of these suits. He believed the Council would admit that the Collector was in one sense an interested party in this matter. It was true that his own pockets would not suffer whether the cases ended one way or another; but his reputation was pledged as it were to the recovery of the loan, and it would therefore be individually his interest to see that every pice was recovered without loss. He did not for one moment believe that any intentional or conscious injustice would be committed; but there was in the Collector what the hon'ble member opposite (Mr. 'Dampier) called the other day, a departmental bias. There might be that departmental bias in the revenue officers which might lead them to overlook the interests of the other parties involved in the case. The Munsif, on the other hand, would be free from that bias; he would be an independent officer, and his judgment would not be open to that charge which might not without reason be taken against that of the Collector. He believed the Council would agree with him that there might arise questions of fact and law in connection with these advances which would require trained judicial experience for their solution; and it could not be pretended that the revenue officers possessed superior qualifications in that respect compared to the judiciary. When the Munsif was trusted in cases between private parties, he did not think it would be just to show any distrust in them when the Government became a party. The Government in other cases trusted the Munsif in suits in which it was interested; why then should suits coming under this Bill be taken out of his jurisdiction? What would be the moral effect on the public mind of such distrust in the Munsif on the part of the Government? Besides, it needs be borne in mind that the suits covered by this Bill were in the nature of money demands; and when such suits arose between private individuals, they were told to go to the Small Cause Court or to the Munsif's Court. If, then, the Government happened to be an interested party in a case of that kind, BABOO KRISTODAS PAL did not see why a different agency should be resorted to for the trial of the suit. It was true that the Government employed a special agency for the trial of cases in the nature of arrears of demand; but it could not be desirable to broaden this invidious distinction in all cases. In fact there ought to be as little distinction as possible between the Government and private parties in the trial of suits. The Government, as the employer of the judicial agency, ought to show its confidence by entrusting the trial of suits in which it might be interested to the ordinary tribunals of the country.

There were also other weighty reasons why the revenue officers should not be entrusted with the trial of these suits. From some of the papers before him, he found that already doubts were entertained by some officers as to whether it would be always easy to identify the parties who took advances in such cases

in which they might deny having received the advances. For instance, he found from the report of the Collector of Bhagulpore that Mr. Kirkwood, the Relief Officer, said that "of course in many cases the parties must have only made their mark, and the only difficulty would be if they *denied* their identity and urged false personation on the part of some one else, it would be impossible for any one to identify each man to whom the order was given." Then the report of the Collector of Monghyr went further, and even proposed to throw the *onus* of proof from off the shoulders of the plaintiff to those of the defendant Mr. Campbell, the Sub-divisional Officer in Monghyr, said on this point:—

"In the Bill now before the Council, it should be well to insert a section throwing the *onus* of proof on the person repudiating his identity and asserting personation or fraudulent entry of his name in a bond."

Now, with these opinions entertained by the revenue officers, it might be easily imagined whether ryot defendants would receive fair play; whether they might not be called upon to prove a negative in defiance of the recognized principles of civilized law. Then how were the advances made? They were made by goladdars, relief officers, sub-deputies, *et hoc genus omne*.

There might have been many abuses. When the villagers in their collective capacity took the advances, some of the ryots might not have received the full quantity entered against their names—some might not have received any at all. Then persons holding in common tenancy might not have shared alike. There might be many questions in connection with these advances which it was very desirable should be carefully sifted by a properly qualified judicial agency. It might be said that the trial by a judicial court would be dilatory and tedious, and might defeat the objects for which the Bill was introduced. He denied that. He did not propose that these suits should be tried under the Civil Procedure Code. He simply suggested that the certificate procedure laid down in Act VII of 1868 should be followed, with this modification that in lieu of the Collector the Munsif should be inserted. If experienced Munsifs were appointed to try the cases, they would be able without much difficulty to sift their real nature and merits and decide satisfactorily. He did not think the interests of the Government would suffer in the least by transferring the jurisdiction in these cases from the revenue officer to the Munsif. On the other hand, he might observe that if his proposal were adopted, the procedure would be still more summary than that contained in Act VII of 1868. That Act, as the Council were aware, allowed an appeal from the decision of the Collector to the Commissioner, whereas he proposed that the judgment of the Munsif should be final. Thus the primary object of the Bill would be attained if the proposed procedure were adopted.

The next question was as to the time for the repayment of the loans. None was better aware than His Honor the President of the condition of the ryots at the time when they took the advances: they had gathered no crops from the field; they had sold all they had at home to keep their body and soul together; they were on the brink of starvation, and then came in the Government, like the good Samaritan, to give them money and food when they hungered and water when they were thirsty. That was a most noble act of humanity. But should

not the same generous consideration which was shown to the ryots in their distress be shown to them in the recovery of these loans?

It should be remembered that these ryots were entitled to peculiar consideration on the part of Government. If they had not, from a sense of self-respect, taken loans from the Government, but had, on the contrary, gone to the relief centres as poor beggars, the Government would have been obliged to feed them, and would have had to debit the whole amount so expended against the revenue. But because these ryots had a sense of self-respect, and wanted to earn their livelihood by honest labour, and to borrow money when they had not any, and to repay it when they had sufficient means,—because, he said, these ryots followed an honest and honourable course, the Government was in a position to recover what it had laid out for their maintenance, and they were not unwilling to pay their just debt. As he had already observed, the Collectors as a body thought that there need be no apprehension entertained about the recovery of these loans. Now, what was the position of the ryots to-day? They had in the first place to meet these loans from the Government; then the rents of the zemindar, which were in arrear; then their own household expenses; and numerous other demands. With respect to the Government demand, it should be remembered that they contracted the loan at one rate and had to repay it at a different rate; they received the loan in grain and had to repay it in money. They borrowed it at from 10 to 12 seers to the rupee, and they would have to sell rice from 25 to 35 seers to make up that rupee. Here they would suffer great loss. Then, again, the rents of the zemindars had been in arrear, which they must pay up.

The zemindars, as the Government had testified, had shown considerable liberality and humanity in assisting their distressed tenantry; but they could not be expected to meet the Government revenue this year, as they did last year, from their own pockets, or by borrowing money. The ryots, as a matter of course, must now pay their rents to the zemindar, and they had their own expenses to meet. Was it possible that one year's crop would be sufficient to meet all these numerous demands? It was true that last year's crop had been left to the ryots, because the Government did not in all cases enforce their demands this year. But the demands upon them were so many, that it was doubtful whether in all cases the ryots would be able to meet fully all these demands with the next year's crop. Indeed if such was possible, then the failure of one year's crop would not have brought millions of ryots very nearly to death's door. There might be ryots in good circumstances who might be able to pay at once; there might be others, again, who would want two, three, or four years to meet the aggregate demands upon them, and in these cases the Government ought to show some consideration. It was therefore necessary that a discretion should be given to the Collector and the Court to receive the money in convenient instalments. It might be said that the amount of loan per family or head was very small; it might be small compared to the means of others: but the amount was not small compared to the means of those who had contracted them. Already in one district a complaint had come that though it was understood that the loan would

have to be repaid in two years, notice had been served for its repayment at once. He did not know how far the case was true, or how far this was general, but such a complaint had come. It was therefore of the utmost importance that some provision should be made in the Bill authorizing the Collector to receive payment in convenient instalments, according to the circumstances of each party, and he had accordingly thought it proper to insert a provision to that effect in his amendments. He was aware that this object might be met by an order from the Executive Government. If the Hon'ble President would give such an assurance from his chair, it would not be necessary perhaps to make such a provision in the Bill. But BABOO KRISTODAS PAL might point out that if the procedure he recommended were not adopted, there would be an appeal to the Commissioner; and if there were no provision in the law authorizing the Collector to receive the money in instalments, it would not be open to the ryot, on appeal to the Commissioner, to urge that no time had been given to him for the repayment by instalments. As one of the grounds of appeal, it would be convenient to insert this provision in the Bill.

In making these remarks, he would only add that he was as anxious as any hon'ble member of the Council to afford every facility to the Government for the recovery of these loans: in fact it was but barely just to the general tax-payers of the country to provide such facilities. But he would repeat that the same generous spirit which had characterized the operations of Government in assisting the ryots in their late distress, should actuate it in providing for the realization of the famine loans.

The HON'BLE MR. DAMPIER said, as he anticipated in his speech at the last meeting of the Council, the hon'ble member who had just spoken had most ably expressed most of the arguments which were advanced in the memorial which the British Indian Association had presented to the Select Committee. In that memorial three points were made: first, that it would be better that it should be left to a judicial rather than to a revenue officer to pronounce an authoritative declaration that a certain amount was due to the Government in repayment of the loan in question; secondly, that the Bill should restrain the Government from proceeding against tenures in realizing sums which had been authoritatively declared to be due; and thirdly, that a discretionary power should be left to the officer making the authoritative declaration to fix the instalments by which the debt should be repaid. The hon'ble member had moved amendments which embraced the first and third of these points, and had dropped the second as regards not proceeding against tenures.

The first objection was founded on what MR. DAMPIER had before termed departmental bias of the revenue officers; and after the fair and temperate way in which the hon'ble member had put this objection, it was not for MR. DAMPIER to say that it was unreasonable, that it was a slight upon the Collectors, that it showed a want of confidence in the revenue officers, and so forth. The objection was not a frivolous one: he recognized it as a fair one, and as raising a fair subject for discussion. He could well understand that there was a feeling that the Collector (as the executive officer who had been bound to use moderate caution in making these advances, and who was responsible for the

realization of them to the Government,) would be to a certain extent unconsciously biassed in the direction of recovering these loans summarily and arbitrarily. But this objection had been very fully considered by the Select Committee; and on behalf of the majority of the Committee he had to say that they came to the conclusion that it was outweighed by considerations on the other side of the question. These considerations were that the Collector (and in the term Collector he here included the higher officers of the Revenue Department, who, under the Bill as it stood, would have to make the authoritative declaration that the amount demanded was due,) was in a better position to do substantial justice in these cases, and to ascertain the real facts of the case, than any officer of another department, whether judicial or other, could be. The Committee thought it was possible that if the case went for hearing before the judicial officer, the debtors might in some cases get the advantage of technical objections, which they would not perhaps get from the Collector; but they felt convinced that in the vast majority of cases, at any rate, substantial justice, as between the two parties, was more likely to be done by the Collector than by an outside Judge. Considering the habits of the people, the Committee thought that the very knowledge that the mere raising of an objection to the debt would lead to an inquiry by an officer of the Civil Court, would be sufficient to induce the ryot to try and put off the evil day, or even to get off paying what he felt himself to be a fair and just debt, by making *malâ fide* objections. In regard to questions of disputed identity, the Committee took into consideration the departmental knowledge which the Collector had; and with his special knowledge of the villages in which these loans were made, his relations with which had been drawn more close by the events of the last year, and considering these, they thought that on a question of identity the Collector was in a better position to give a substantially just judgment than any officer of the Civil Courts could be. Further, they considered that as to the particular matter of identity, if a question was raised at all, it must be in its simplest form; for these loans were not made in a corner: they were made in the presence of the village community, at the doors of the recipients, with the people standing round them. Of course there might be rascality and fraud; but the protection and guarantees against fraudulent personification seemed to be greater in the case of these loans than in almost any transaction that could be imagined. And MR. DAMPIER could not think that when once a doubt as to identity was fairly raised, departmental bias would come into play in the matter. He could not believe that a revenue officer, in the position of those now in question, having any doubt whether the person from whom repayment of a loan was demanded was really the person who received the money, any amount of departmental bias would make him stop short of thoroughly satisfying himself on the subject before enforcing payment.

Passing from questions of identity, the majority of the Committee were of opinion that to call in the interference of the establishments and machinery of the Civil Court was to entail additional expense upon the ryot without sufficient counterbalancing advantage. Every case of this sort must first be got up in the Revenue office. According to the procedure which the Government had asked

the Council to allow, it would begin and end in the Collector's office, and the establishments of the Revenue office alone would extort the illicit gratifications which unfortunately were notoriously inseparable from proceedings in public offices in this country; but according to the proposal of the hon'ble member to substitute the Munsif for the Collector, after the Collector's subordinates had enjoyed their gratification, the case would go to the Munsif, and a new horde of underlings would fall upon the unfortunate ryot. These considerations preponderated with the Select Committee over the objection to the adjudication of the Collector which the hon'ble member had so ably argued.

And there was one other consideration, that the Collector had been accepted by the law as the authority who was to enforce demands similar to these—demands due to Government. It did not seem to him that there was any good reason for going specially to the Munsif in this particular class of cases, and requiring him, as the hon'ble mover of the amendments had explained, not to act according to the procedure of the Civil Courts, but *pro hac vice* to exercise precisely the functions with which the legislature had vested the Collector in all similar cases.

The objection as to proceeding against tenures had been dropped; and he did not think that practically there would be any procedure against them, except in the cases which the Bill was intended to meet,—cases of *mala fides* in the repayment of a just debt, where the repayment was opposed by chicanery and fraudulent combination. Then he thought the Government would be perfectly justified in pressing for repayment by proceeding or threatening to proceed against tenures. But in the ordinary course of things, he did not think that the Government would be led to proceed against tenures

The third point was the question of instalments. The procedure in the recovery of these advances might be looked upon as dividing itself into two parts: the first up to the point of the decree or authoritative declaration being given that the money was due—that was, the declaration upon which legal action could be taken; the second part was the procedure for realizing money due under that declaration. The proposals as to tenures and instalments touched the second part of the procedure, the mode of realizing the amount due. It would be observed that these were not proposals to refuse to give the Government the extraordinary powers for which they asked; but they were proposals to restrict the Government, and to tie its hands by withdrawing the powers which it could ordinarily exercise in realizing any kind of debt,—powers which not only the Government, but every other judgment-creditor, possessed in realizing debts decreed. The hon'ble member said that the ryot should have the same consideration shown him afterwards in the realization of the debt as he had had when the money was advanced. Certainly MR. DAMPIER admitted that; but there was no reason for the exercise of such consideration at the latter time being made the subject of legislation any more than at the former. The hon'ble member had then said that if the President would give an assurance that such consideration would be shown, he would not press this objection. In this place MR. DAMPIER might say that, in his

judgment, it was not desirable that the Council should be too frequently called upon to proceed upon personal guarantees from the Lieutenant Governor sitting in that chair. He would prefer that, on the one hand, the Council should not be too ready to ask for such guarantees, and, on the other, that it should not be too often asked to allow them to influence its action. In the present case he would ask the Council to judge of the matter as it would of any other, without reference to guarantees. It was known that up to this point the Government, as a body of men, had, under certain circumstances, acted in a certain way towards those who had suffered in the famine; they had, in the interests of these poor men, acted up to the extreme limit to which their duties and responsibilities to the general tax-payer would allow them to go. From this, without falling back on any assurance from the Lieutenant-Governor, the Council might fairly draw the inference that the Government would continue to show the same leniency and consideration throughout the whole transaction. The whole arguments in favour of leniency which the hon'ble mover of the amendments had advanced were certainly such as would weigh with His Honor and the Executive Government; they would doubtless be borne in mind, and go far to influence the Government in its action. But they did not give any valid reason for transferring the duty of humanity from His Honor's shoulders to those of every Munsif in the districts concerned; for that was what the proposal amounted to. It must not be forgotten that every *mahajun* to whom a ryot was indebted would be able to throw him into absolutely the same difficulties as the hon'ble member had described. But there was no proposition to restrain creditors in general from pressing indebted ryots who had lately suffered from the famine; why then should the Government be more restricted than any ordinary creditor? He would ask the Council to look at the course of this Bill. The Government came to this Council, saying this great calamity had occurred, and that they, as trustees of the public money, had been obliged to make temporary use of some three quarters of a million in relieving private distress, on the distinct understanding that the requirement was temporary only. Under the pressing circumstances of the case, it had been impossible for the Government officers to take all those precautions and all that care on technical points which would have been due to the public under ordinary circumstances. They were obliged to waive technicalities, and to give the money away loosely to those who required it so urgently. Having done that, the Government now came to the Council, after the pressure was over, after the lives were saved, and asked for the same measure as they had dealt to the debtors in the time of their necessity; they asked that technicalities and forms might, to some extent, be waived in the recovery of the debts, as they had been waived in making the advances. They asked the Council to give a procedure by which substantial justice would be done, though not in the highest and the most advanced form, that of judicial procedure. The Collectors were the officers absolutely in the best position to judge whether the money was due or not in each case: let these men be entrusted with the power to make a legal declaration that the money was due, upon which legal action could be taken afterwards. That done, the Government asked for no facilities greater than

every creditor had for the recovery of debts due to him. The answer which the British Indian Association proposed to give to the Government was—"We highly approve of your action; you were quite right in relaxing all these technicalities and lending the money without insisting on the precautions which would have been necessary under other circumstances, and we quite acknowledge that you require special facilities for recovering the money: nevertheless we will not give you the facilities for which you have asked towards obtaining the authoritative declaration. On the contrary, we shall take the opportunity of your having asked the Council for this facility to limit the ordinary powers which you in common with other creditors have of recovering debts when formally declared to be due. After once it is declared that money is due on account of these loans, we shall not allow you to proceed against tenures, and we shall tie your hands by fixing instalments; thus placing you under special disabilities as regards the recovery of these loans, which are not imposed upon any other creditor." If the Council would look at the matter in that view, it would scarcely be surprised if the Government replied—"If this is the only measure which the Council can offer to us by way of facilities for the recovery of these loans, we will not ask the legislature for any special assistance at all; we had rather be left to recover under the ordinary procedure of the law." He thought upon these grounds the Government was fully justified in asking the Council to reject the amendments which had been moved.

The Hon'ble Baboo Jagadanund Mookerjee said the question before the Council was whether the summary procedure should be given to the Munsif or the Collector. There could be no doubt that it was the Collector who made the advances, and he was therefore the person who, in a subsequent proceeding, should be vested with the power of realizing the money. The Collector who advanced the money would be in a better position to know whether the person before him was the identical person to whom the money had been given,—whether the identity was fully proved. If that question were submitted to another tribunal, it would go before a new officer, whose experience was much more limited than that of the Collector; because the Collector was supposed to be an officer of at least ten years' standing, and the Munsif might have been appointed only the other day. Therefore, comparatively speaking, the Collector was supposed to be better experienced than the Munsif. To give power to the Munsif in a matter like this, would throw upon him a duty which, to say the least, he was very little acquainted with. The advantage that might be gained would in no way override the disadvantage apprehended of prejudice and bias which were supposed to influence the Collector. In the non-regulation districts, the Deputy Commissioner was an officer who was entrusted with the powers of a Collector, a Judge, and a Magistrate; and though all those powers were exercised by one and the same individual, we had not yet heard that, as a rule, he showed a bias when he had to try a question judicially. If, therefore, we could trust the Deputy Commissioners, who were vested with the powers of both Collector and Judge, why should we say that the Collectors of districts would be biassed, and were not fit to be entrusted with the powers

which the Bill conferred upon them. It appeared to BABOO JAGADANUND MOOKERJEE that it was the Collector who, from his past knowledge in the particular matter, ought to be better able to try these questions summarily. He thought the amendments proposed went to a great extent beyond the objects which the Government had in view in bringing this Bill before the Council.

The HON'BLE THE ACTING ADVOCATE-GENERAL said he thought if the main provisions of the Bill were carefully examined, it would be found that the principal objections advanced against it by the hon'ble mover of the amendment would resolve themselves into fears and apprehensions of an unreal character. It was quite clear that the hon'ble member who assisted in the deliberations of the Committee had not been at all convinced by the discussions which had taken place at the Committee meeting, as he had repeated precisely the same objections as he had then made. We endeavoured to convince our worthy colleague of the position we took up in the report which we had presented; but it appeared we had not succeeded in convincing the hon'ble member of the propriety of that position. The ADVOCATE-GENERAL would repeat that if the provisions of the Bill were carefully looked into, the objections which had been advanced would wholly fail. As he understood those objections, they might be generally put down thus: first, that the Collector, being pledged as it were to the recovery of the money, would naturally be biassed in favour of the Government to whom he would have to account; secondly, that difficult questions of law and intricate questions of disputed identity would necessarily arise in the consideration of these cases, and would render it necessary that the scene of contest should not be the Court of the Collector, but that of an officer ordinarily exercising functions of a judicial nature.

With regard to a portion of the second objection, namely that difficult questions of law requiring judicial determination would arise, he was wholly unable to make out how such questions could arise in respect of such simple matters. It was however possible (though highly improbable) that serious questions of identity might arise in the investigation of these cases; and these were the only questions to which it was necessary to refer as bearing on the subject of bias, which formed one of the principal grounds urged in support of the proposed amendment. The objections urged by the hon'ble member were those originally made by Baboo Digumber Mitter, and consequently the Committee appointed to consider the Bill were fully aware of those objections; and the Committee, bearing in mind the objections raised, considered it necessary to have the evidence of gentlemen acquainted with the procedure adopted in the making of loans. Two gentlemen who attended with bonds and books to show how advances were supported by evidence, were fully examined; and any one there present would have been struck with the very great care and clearness with which the books had been kept. In the absence of any just ground of suspicion or distrust, one might fairly assume that these bonds and books faithfully represented a true state of things. The books stated the names of the ryots to whom loans were granted, the names of their sureties, the amounts of loan granted, and they contained a column under which any repay-

ment would be entered By looking into his books, the Collector would at once see what were his outstanding advances, and by whom due; and he would thus be enabled to make his certificate without difficulty. It should be remembered that Government advances were made to two classes of people; the zemindars or a collection of villagers, who stood as sureties and who were well-known and substantial persons; and the ryots, or the persons who received the benefit of the advances. Certificates would therefore be ordinarily made against the surety or sureties and the principal debtor, the ryot. If it should appear, upon cause being shown against a certificate, that a ryot mentioned in such certificate disputed his identity, and there should exist good grounds for doubting his having been a borrower, it would not be necessary in the majority of cases for the Collector to do more than to omit or strike out the name of such person, and to amend the certificate, making the same available against the supposed borrower's surety or sureties, who were, as previously observed, well-known and substantial persons. In this manner the supposed bias calculated to induce the Collector to fix liability upon a particular ryot would not be allowed to have any effect on his mind. On the Government recovering the amount of any advance from a zemindar or other surety, the right to have a certificate under the second section of the Bill would accrue to such zemindar or other surety. If, in the assertion of this right, a certificate be applied for and made by the Collector, and cause be afterwards shown against the same, on the ground that the ryot charged thereby disputed his identity, the question of his liability or otherwise would then be entered on and decided by the Collector, without such bias as had been imputed, inasmuch as the Government would have been previously paid off by the zemindar or other surety, and the Collector's interest in the matter would have thereby ceased. If, however, in a few exceptional cases the supposed bias of the Collector might be deemed a disturbing element in the proper administration of justice, a correction had been provided by an appeal to the Commissioner. The ADVOCATE-GENERAL had assumed that no question of identity could possibly arise as regards a zemindar or other well-known surety, and he considered that he was perfectly justified in making that assumption, for reasons which were self-evident and need not be further stated.

Then, with regard to the other question, namely the question of joint tenancy and advances received by one person for the benefit of several persons, being members of a joint family, he considered that such questions could not arise. The estate and interest of the debtor alone would be liable to be sold, and not the whole estate of a joint family. Under the certificate procedure the Collector would not be entitled to adjust equities between the Government and all the recipients of its bounty, but merely to settle the amount of the liability of the debtors named in the bonds and books. The only questions which would ordinarily arise for determination were, *first*, whether the money was lent; *secondly*, whether a particular advance was made to the ryot against whose name the same was entered; *thirdly*, whether the whole or any portion was repaid. On the first question, there would exist no doubt; and with reference to the third question, repayments would be

supported by receipts. The second question raised the question of identity, already referred to and discussed. With great distress prevalent in a particular district, it was difficult to suppose that all, or almost all, persons in the position of ryots would not readily avail themselves of Government advances, and consequently the fraudulent insertion of a particular man's name in a bond or in the Collector's books would indicate a case of a highly improbable character—so improbable, that in dealing with the general subject for the purposes of legislation, the possibility of the occurrence of the above case of fraud should not be treated as a serious objection to the summary remedy proposed by the Bill.

Having attempted to show—the ADVOCATE-GENERAL trusted in a satisfactory manner—that the jurisdiction intended to be conferred by this Bill on the Collector was not open to any well-founded objection, he would proceed to consider the advisability of the substitution of the Munsif for the Collector. As no difficult questions of law requiring investigation were likely to arise, there existed no necessity for the substitution of an officer in the Judicial Department for the Collector, and consequently the proposed amendment was not required. He would go further and say that if the amendment, as it was worded, were accepted, the Bill had better be dropped. If jurisdiction were given to the Munsif, upon objections taken to the certificate filed, written statements on behalf of both parties would probably follow, and the case would be decided according to the procedure observed in civil suits. An appeal might be taken away, but the power of superintendence vested in and exercised by the High Court over the Munsif's court would exist, and any litigious individual might, upon *ex parte* statements, succeed in invoking in the first instance (though unsuccessfully in the end) the exercise of the power of superintendence, and thus cause delay, and thereby frustrate the whole scope and scheme of the summary remedy intended to be provided by the present Bill. It appeared to him, therefore, that the summary remedy intended to be provided was incompatible with the proposed amendment of vesting the Munsif with jurisdiction over these cases. If the Bill were not to be accepted in its present shape, it would be better to leave the Government to invoke the agency of the civil courts in the ordinary way.

Then, passing on from that, the ADVOCATE-GENERAL would observe that he did not think the Council ought now to be called upon to consider the question whether the jurisdiction already given to the Collector in respect of Government demands in a great number of cases was right or wrong, whether it was desirable or undesirable. The principle had been accepted, and the only question before the Council was, should that principle be extended to the simple cases which were the subject of this Bill, and as to which the Collector had the fullest evidence in the books and bonds in his possession. If it were once conceded that the principle of the certificate procedure should not now be questioned, this was just one of those cases to which it should be made to extend. The principle enunciated by Act VII of 1868 remained; and he submitted that if that principle was shown fairly to apply to the circumstances brought before the Council, no reasonable ground would exist for the limitation of the principle contained in that Act. On the subject

of vesting Munsif's with jurisdiction, he would make one observation as arising from his own experience as a practising Barrister in regard to the change which had already taken place in the transfer of rent-suits from Collectors to Munsifs; and that observation was, that rent-suits were not now decided so expeditiously or broadly upon their merits as previously by Collectors, and that probably upon inquiry it would turn out that technicalities were allowed to prevail, and suitors were delayed in obtaining their decrees.

He now passed on to the question of the payment of the money by instalments. The objection on that score came to this—"You might have a summary procedure for investigation, but you are not to collect your money expeditiously." The humanity and liberality of the Government in having made these advances were generally admitted; and that being so, it might be fairly presumed that the Government would continue to deal with the ryots in the same liberal spirit, and that, when any such persons were really unable to pay the whole amount at once, the Government would not compel them to do so.

But the hon'ble member thought that it was just possible that some cases might turn up in which the same consideration would not be shewn. The ADVOCATE-GENERAL did not see that the Collector, as representing a humane Government, should be put in a worse position than any ordinary creditor. Did the ordinary creditor press a person, who was able and willing to pay by instalments, with immediate payment of the whole decree so as to ruin him? Experience satisfied us that he did not; but the power of enforcing immediate payment from persons able, but unwilling to pay, should be left unfettered. There were persons in this and other countries, nay even of the class of zemindar, who had a natural aversion to paying their debts, and who would not pay unless a decree had been obtained and attachment issued; and any indulgence or leniency towards such persons was not desirable. Considering, moreover, that in the majority of cases substantial persons were bound to the Government for the repayment of advances, it appeared to him that the Bill should not contain the proposed amendment.

While submitting to the Council that the objections of the hon'ble member were not tenable, the ADVOCATE-GENERAL would admit that they were proper objections to raise for the purpose of inviting discussion, and that the objections had been placed before the Council in a lucid and frank manner by the hon'ble mover. In conclusion, he would repeat that he trusted that the Council would be satisfied that they were dealing with a simple matter, and that no questions of law would be likely to arise, and cases of mistaken identity would be very rare; and that, as the certificate granted by the Collector on becoming final would simply take the place of a decree of a Civil Court, all matters connected with a fair and just mode of getting in payment of such a decree should be left to the unfettered discretion of the Government.

The HON'BLE BABOO KRISTODAS PAL said he would not detain the Council with any lengthened remarks by way of reply to the objections taken to the amendments which he had moved. He felt much obliged to hon'ble members for the very fair and frank manner in which they had met his remarks. At the same time, there was one misconception which underlay almost all the objec-

tions taken to the amendments, viz. that the Collector had made the advances, as it were, with his own hands, and would decide the case himself. That was not the fact, as hon'ble members were well aware.

[The Hon'ble Mr. Dampier explained that he meant the Collector as representing his Department. He knew personally the Deputy Collector, or the gomashta, or the circle officer who made the advance, and he was more likely to know than any one else whether the man who made the advance was a careless or a careful man. Mr. Dampier alluded to the Collector as head of the Department, and contended that the Collector was more likely to get at the substantial truth than the Munsif.]

The Hon'ble Baboo Kristodas Pal continued.—The explanation given by the hon'ble member amounted to this: The Collector relied on the information of his subordinates, and the subordinate being, in many cases, either a sub-deputy, a golahdar, or a circle relief officer, the Collector could not thus be expected to have that local knowledge on which the hon'ble mover had laid so much stress.

As for the relief officers, they were only temporary; they came for a day and then went away—that was their position: and he did not see how their knowledge, whatever it was, could expand the knowledge of the Collector.

As regards the machinery of the Civil Court, Baboo Kristodas Pal's object was not to revive the procedure of Act VIII of 1859. As he had explained in the remarks with which he introduced his motion, his object was simply to substitute the Munsif in the place of the Collector, the object being to vest the officer who had regular judicial training and experience with jurisdiction in these cases. The hon'ble and learned Advocate-General had observed that there could be no complex questions requiring judicial investigation, and that therefore it would not be necessary to have a trained judicial agency for the trial of these cases. Now, Baboo Kristodas Pal believed, as hon'ble members generally believed, that in the majority of cases there would be no litigation whatever; the ryots would pay without raising any objection. But there might be a few cases in which disputes might arise, and it was only in such cases he apprehended difficulty; and he therefore proposed that a judicial officer should be vested with jurisdiction.

As regards the question of additional expense to the ryot, if the certificate procedure as laid down in Act VII of 1868 were followed, he did not see how additional expense would be thrown upon the ryot when only the Munsif was substituted in place of the Collector as the trier of the suit.

With regard to the question of departmental bias, he must confess that the learned Advocate-General had argued the case with considerable ingenuity. He told us that where a zemindar or a collection of villagers was responsible for the debt or loan, it would not be difficult to identify the person; because the zemindars were men well known, and the particular villagers who stood security could easily be identified. But he had not said that in other cases, where the ryots were individually responsible, it would not be easy to identify the parties; and then the Collector might be carried away by his departmental bias in fixing responsibility, particularly if he thought, as one officer did, that the *onus* should be thrown upon the defendant, and that the latter should be

called upon to prove a negative. The learned Advocate-General, by his remarks, virtually implied that in other cases there might be difficulty; and in order to solve such difficulties he (BABOO KRISTODAS PAL) would prefer the trained experience of the Munsif to the patriarchal knowledge of the Collector. But the main objection of his learned friend to the Munsif seemed to be that his proceedings would be open to the general superintendence of the High Court. Now, he confessed that he was not prepared for an exhibition of such nervous dread of the High Court on the part of the learned gentleman, who had once graced the bench of that Court, and who was a representative of law in this Council. [THE ADVOCATE-GENERAL explained that he was speaking on the subject of expedition,—that where there was the superintending power of the High Court, matters would be delayed.] With regard to expedition, then, he had already explained that the procedure he recommended would be still more expeditious than the procedure under Act VII of 1868; because under that Act there was an appeal from the decision of the Collector to the Commissioner, whereas under the amendments he had proposed the judgment of the Munsif would be final; and even taking into consideration the supervising power of the High Court, the procedure he recommended would not be so dilatory, inasmuch as under Act VII of 1868 an appeal would lie to the Commissioner as a matter of right, whereas the interference of the High Court, under the power of general superintendence, would be optional.

As to the question of instalments, he need only point out that he did not mean that repayment by instalments should be made compulsory in all cases. He meant that the Collector should have a discretion to take the money in convenient instalments, according to the circumstances of each particular case. In some cases the Court might think it necessary to order repayment at once; in other cases it might exercise its discretionary power, and direct repayment by instalments. In making that proposal, he did not, as his hon'ble friend opposite had remarked, want to transfer the duty of humanity from the shoulders of the Lieutenant-Governor to the shoulders of the Munsif; the Munsif would, in that case, as much represent the Crown as the Collector.

The amendments were negatived.

On the motion of the HON'BLE MR. DAMPIER, the Bill was then settled in the form recommended by the Select Committee.

The Council was adjourned to Saturday, the 20th instant.

Saturday, the 20th February 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor.
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syad Ashghar Ali Diler Jung, C.S.I.

RECOVERY OF ADVANCES MADE BY GOVERNMENT.

The Hon'ble Mr. Dampier moved that the Bill to provide for the summary realization of sums due on account of loans made by Government during the late famine operations be passed.

His Honor the President said, before the motion was put, he wished to make one or two remarks briefly on the subject of this Bill. He would first desire to express the satisfaction with which he heard the various remarks that fell from the hon'ble member opposite (Baboo Kristodas Pal). The hon'ble member, who might be considered to be one of the best informed Native gentlemen in Bengal, had borne the strongest testimony as to the necessity that existed for the making of these advances; and considering the hon'ble member was peculiarly cognisant of the views of the great landholding classes in this country, His Honor might assume that this very influential and highly educated class entirely concurred with the Government as to the necessity of making these advances. His hon'ble friend, however, had stated that a departmental bias might exist in respect to the recovery of these advances by the regular revenue officers. Now, he begged to remind the Council that the officers to whom the powers of the Bill, if it should pass into law, would be entrusted were members of the Covenanted Civil Service. It had always been one of the traditional and time-honoured principles of the Civil Service to defend the defenceless, to assist the helpless, and to cherish the poor. Further, although the Government was generally strict and particular in the realization of its demands, still he thought that every Native member of the Council would bear him out when he said that moderation and carefulness had always been the characteristics of the revenue management in these provinces. That being the general wish and policy of the Government, we might be sure that not only would the Covenanted Civil Servants act up to that intention on behalf of the Government, but would give a tone to the various Native officials, especially

the Deputy Collectors, employed under them in the administration of the law. His hon'ble friend further justly drew attention to the importance of the Government not being too hasty and harsh in the recovery of the advances. His HONOR thought he could assure the Council that there was not the slightest fear of any such result occurring if the Bill was passed. From the very first he had issued instructions to the local officers not to be too quick in the enforcement of these demands, and to give the people all reasonable time for repayment. If the Bill passed, it was his intention to issue further orders to the same effect. He thought, if ever there was a case in which the Executive might claim confidence from the Legislature, this was one. It would surely be apparent to the Council that we were not likely now to ruin men whose lives we had interposed to save.

He would further express his satisfaction at many of the remarks which fell from his hon'ble and learned friend the Advocate-General. It was of course satisfactory to him to hear upon such excellent authority that the documents, registers, deeds, and all other papers connected with these advances, were upon examination found by the Advocate-General to be accurately and clearly drawn. Accustomed as the Advocate-General was to judge in these affairs—affairs generally conducted in times of peace and security,—HIS HONOR was convinced the Council would perceive the care that must have been taken on the part of the Government and its officers to ensure so much regularity and precision, not in quiet times, but in times of urgency and distress. He believed that if this Bill should pass into law, there was little or no chance of its provisions being to any large extent carried into effect. The people who took these advances evinced the most laudable disposition to discharge their just dues to Government. At the same time it was just possible that amongst so large a number of men, who numbered literally tens of thousands in each of the lately distressed districts, there might be one or two individual cases here and there of men who desired to evade their just obligations. It was also possible that amongst a comparatively ignorant peasantry such an example would have a bad effect. It was therefore necessary that the people should know that the Government had power by this law summarily to enforce payment of these demands, and that such knowledge should operate to prevent any attempt at evasion.

Furthermore, if these advances should be recovered by summary process, it was clear that all chance of litigation would be avoided. Now, he need not point out to the Native members of the Council that if such litigation were to arise between the Government and the ryots, great inconvenience would be caused to the landholders, who at this period had arrears of rent to collect in all these lately distressed districts. The attempt to enforce the lien on the crop on the part of two different parties; the possibility of the crops being distrained or seized for the Government demand at the same time that the zemindars had to collect their rents, might cause great confusion in the agricultural arrangements of these districts. He was sure that if the Bill should be passed into law, all that confusion would be avoided, inasmuch as the possibility of litigation would be precluded.

With these remarks, then, he would commend this Bill to the consideration of the Council.

The motion was agreed to, and the Bill passed.

REGULATION OF JUTE WAREHOUSES.

The Hon'ble Mr. Hogg presented the Report of the Select Committee on the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and moved that the Report be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Hogg also moved that the clauses be considered for settlement in the form recommended by the Select Committee.

The Hon'ble Baboo Doorga Churn Law moved the following amendments:—

"In section 2, in lieu of the 2nd paragraph, insert the following:—

'Every license for a jute warehouse granted under this section shall be subject to the following conditions—

(1.) That no loose jute, jute rejections or cuttings, or cotton, shall be stored, or screwed, or pressed, save within a building the walls of which shall be of masonry, and all the roof of which shall be of masonry or of tiles, and the beams of which shall be of wood or iron.

(2.) That such jute warehouse and buildings therein shall be supplied with solid doors or gates, which can be securely closed.

(3.) That no portion of such jute warehouse shall be used as a residence, and no artificial light or lucifer matches shall be introduced therein, and that no person shall smoke therein.

(4.) That such jute warehouse shall be at any time open to inspection.

(5.) That the engines and furnaces used in such jute warehouse shall be placed as may be considered necessary for safety by the Justices.

(6.) That an annual fee, as the Justices at a special meeting may think fit, shall be imposed in respect thereof at one of the following rates, viz.—

Rupees	1,000
,,	750
,,	500
,,	250
,,	150

and shall be paid in such instalments as the Justices may direct.

(7.) Such other special conditions as the Justices, with the sanction of the Lieutenant-Governor of Bengal, may, on consideration of the special circumstances of such jute warehouse, deem necessary for the convenience of trade, or to prevent risk to life and property in the neighbourhood.'

"Omit Section 8."

He said, in proposing these amendments he would take the liberty to observe that it was unconstitutional to pass a penal law without defining the offences for which penalties were prescribed. The power given to Government was nominal: it would be practically exercised by the municipal Corporations; and would it be proper to delegate the functions of the legislature to those Corporations? It was true that it was difficult to lay down hard-and-fast rules that would

meet all cases; but he thought it was possible to lay down such general rules that would apply equally to all cases, leaving the Executive to add such special rules as might be suggested by local peculiarities or the circumstances of each case. He had taken most of the conditions from the existing Act, divesting them of their objectionable features, and they seemed to him to be so general and necessary, that they must find a place in whatever rules might hereafter be determined upon.

The only other point was the reduction of the minimum fee from Rs. 250 to Rs. 150. He considered the existing rate too high for the smaller jute warehouses. Jute was an important article of commerce; and by throwing obstacles in its way, it would gradually disappear from the town, and house property must seriously suffer in the end.

The HON'BLE MR. BROOKES asked if it was the intention to publish the report of the Select Committee and the papers relating to the Bill. He thought it was desirable to do so, in order that those interested might have the opportunity of addressing the Government or the Council upon the subject.

HIS HONOR THE PRESIDENT stated that he would direct the publication of the report and papers in the next *Calcutta Gazette*.

The HON'BLE MR. DAMPIER said, in the Report of the Select Committee it was mentioned that there was a difference of opinion amongst the members as to whether the conditions which might be imposed on these licenses should be set out in the Bill, or whether a discretion should be given to the Lieutenant-Governor to impose such conditions as he might think proper without further restriction. MR. DAMPIER had been in the minority on that point. He considered that it was not desirable for the Council to throw on the Executive Government altogether the responsibility of prescribing the conditions under which licenses for jute warehouses should be granted. He thought it would be more satisfactory to the public and those concerned in the trade if some attempt were made by the Council to define the restrictions to which their trade and their operations might be subjected under the law. The Bill before the Council did not have its origin in any difficulty felt by the Executive Government as to imposing conditions on licenses which it considered to be desirable, but which the law did not authorize it to impose. The real difficulty which led to the introduction of the Bill was just the other way,—that the law insisted on certain conditions being imposed which experience had shown not to be necessary in all cases. It appeared to him that the best form for the Bill would be to set out, first, such conditions as it was absolutely necessary to impose on every jute warehouse, wherever it might be situated, and then to set out a further set of discretionary conditions, any of which the Justices, or whoever might be the licensing authority, might impose on each license, according to the circumstances of the case. For instance, a jute warehouse situated in a crowded neighbourhood and surrounded by very valuable property should obviously be more hedged in and guarded by greater restrictions than one in a less crowded locality. But the views which he advanced in Committee did not find favour with the majority.

The amendments which the hon'ble member opposite (Baboo Doorga Churn Law) had brought forward did not entirely meet the views which MR. DAMPIER expressed in the suggestions he had made, but would go some way towards meeting them. In his amendments, the hon'ble mover had proposed to omit those conditions which had been found to be unnecessarily restrictive; such as that jute should not be dried and combed except in a roofed building, and that the roofs of warehouses should be entirely of iron or of masonry; and with those two exceptions he had proposed to re-enact entirely the conditions which were imposed by the existing law. So far so good; but then he went on, in clause (7) of section 2, to propose what seemed to MR. DAMPIER to be objectionable. After setting out the conditions which must necessarily be imposed in every case, the amendment proceeded to empower the Lieutenant-Governor to impose "such other special conditions as the special circumstances of each jute warehouse might render necessary for the convenience of trade or to prevent risk to life and property in the neighbourhood." If the Lieutenant-Governor might impose any additional conditions which might be devised on the occasion of each individual license being applied for, it was clear that no restriction whatever was imposed on the exercise of his discretion by setting out (as the amendment did) certain conditions which he must impose. Therefore the amendment did not go so far as MR. DAMPIER should have wished. He should like first to have the compulsory restrictions defined in the Act—all those which experience had shown to be absolutely necessary in the case of every license; and then to set out a list of discretional restrictions, leaving the Lieutenant-Governor to impose any of those which the circumstances of each case might require. If this were done, those engaged in the jute trade could not be suddenly called upon by the Executive to subject themselves to some newly contrived restriction which was not contemplated by the legislature.

The second part of section 8 of the Bill provided for the making of rules for regulating "all other matters connected with the enforcement of the Jute Warehouse and Fire-brigade Act, 1872, and this Act." That provision could not well be omitted, as provided in the amendment. Therefore MR. DAMPIER could not support the amendment, and would himself make another motion directly.

Another point to which he would refer was in connection with the representation submitted by the British Indian Association. They said that the owners of roperies were obliged to keep on their premises a certain quantity of loose jute for the purposes of their trade. He would ask the hon'ble mover of the Bill whether the objection had any practical existence. If the facts were as they were put; if the law did not admit of any of the restrictions regarding jute godowns being relaxed on behalf of jute taken in for daily consumption in a ropery, then he thought that the representation of the British Indian Association deserved consideration. The motion, which he would put in a definite form, was "that the Bill be referred back to the Select Committee, with instructions to define separately and expressly such conditions as shall necessarily be imposed by every license, and such additional conditions as may be imposed by any license, according to the circumstances of each case in which a license may be granted."

The Hon'ble Mr. Dampier.

The HON'BLE MR. HOGG said, he was not prepared to accept the amendment proposed by the hon'ble member on his left (Baboo Doorga Churn Law), nor the other amendment proposed by the hon'ble member opposite (Mr. Dampier). As he explained when he asked permission to introduce the Bill, it seemed to him that the proper course was not to lay down hard-and-fast rules, but to leave the matter altogether to the executive authority, with a view from time to time to fix such rules as experience might render necessary. The first of the amendments before the Council of which notice had been given would almost altogether nullify the objects for which the Bill was introduced, as the present cause of complaint by jute warehouse proprietors was that it was practically impossible to dry jute in confined godowns, and that it was absolutely necessary, therefore, to allow considerable latitude to the owners and occupiers of jute godowns, with a view to allow them, where the locality permitted, to dry jute in the open, so as to have the benefit of sun and air. As clause (P) of the amendment laid down that "no loose jute, jute rejections or jute cuttings, or cotton, shall be stored, or screwed, or pressed, save within a building the walls of which shall be of masonry," that would entirely prevent jute being dried in the manner considered absolutely necessary by those interested in the jute trade.

[The HON'BLE MR. DAMPIER explained that the provision regarding the combing and drying of jute contained in the existing law was omitted in the amendment.]

The HON'BLE MR. HOGG continued.—It was impossible to expect the owners or occupiers of jute warehouses to remove their jute daily for the purpose of drying, and have it removed again at night. To do so would entail great expense, which the legislature ought not to impose upon the proprietors and occupiers of jute warehouses. He had had the advantage of a personal interview with one of the chief proprietors of jute warehouses, the manager of the Camperdown Jute Company, who pointed out the defects of the present law, and complained of the vexatious interference of the suburban municipal authorities in the working of the Act. He was the representative of a large Company having their head-quarters at Glasgow, whose interest it was to secure their property from fire. MR. HOGG found that the place of business of this Company was at Cossipore; that it was well managed, and situated far from crowded localities, and no restrictive enactments were called for in governing the arrangements of that particular warehouse. It was far from all other habitations, and had enclosed within its walls a considerable space of land. In institutions of that sort, he thought it should be left to the discretion of the managers to dry and comb jute in the open air. He merely gave this illustration as a case in point, to shew that all hard-and-first rules, however lax, would be too stringent to be imposed upon a jute godown situated in an isolated position.

If the Council adopted the amendment proposed by the hon'ble member opposite (Mr. Dampier), it must necessarily lay down both classes of rules, which he proposed should be of different degrees of stringency,—one a set of hard-and-fast rules to govern all jute godowns, whether in the town or the suburbs, or in Howrah; the other a set of still more stringent rules, which would

be extended, at the option of the Lieutenant-Governor, to any special localities. If such clauses were adopted, considerable inconvenience must necessarily follow, as the rules could not be so drafted as to meet every case. Circumstances might year by year arise which would render it necessary in some cases to relax the rules, and in other cases to make them more stringent.

It was objected by the hon'ble member on his left (Baboo Doorga Churn Law), that it was an unconstitutional course for the legislature to delegate its authority to the executive, and to pass penal clauses for offences which were not laid down in the Act itself. From this objection it would really seem as if this were an entirely new course. The Council had merely to refer to Act VII of 1864, the British Burmah Municipal Law, and the Act which was passed in 1873 for the Municipality of Oude. We there found exactly the same power given to the executive to pass bye-laws and penal clauses imposing penalties for the infringement of any bye-law passed by the Municipality under the sanction of the law.

He trusted that the amendments before the Council would not be accepted, but that the principle which had guided the Select Committee, namely to leave it to the executive authority to frame rules subject to the sanction of the Lieutenant-Governor, would be adhered to.

The Hon'ble Mr Schalch said, as one of those members of the Select Committee who adopted the report which was submitted to the Council, he wished to say a few words in regard to our having taken away from the Council the whole responsibility of laying down strict rules It struck him that the main point for consideration was the situation of these jute warehouses. There were three classes into which they might be divided in reference to their situation. First came those which were in the heart of a wealthy and populous town; next those which were situated at some distance from the crowded thoroughfares of the town; and the third class comprised those warehouses which were situated in almost open spots, where there would be very little risk of fire to the property in the neighbourhood. To ask the Council to lay down rules which would apply to all these classes of jute warehouses would be to impose on them an extremely difficult task. In fact, as had been just said by the hon'ble mover of the Bill, those rules which would apply to one locality would not apply to another. We therefore thought it better that rules suited to each locality should be drafted by the Municipality within whose jurisdiction the places proposed to be effected were situate. They would have better means of judging than this Council what the circumstances of each locality required, and would have the advantage of the opinion of many of their members who were more or less interested in the trade. The opinion so digested would go up to the Government, and the Government would exercise a discretion in refusing to sanction the rules if they considered them unnecessarily harsh on the one hand, or unnecessarily lax upon the other.

With regard to the conditions proposed in the amendment, he must observe, as the hon'ble mover of the Bill had mentioned, that the first clause was open to the objection which had been raised. There was no provision made in the proposed conditions for the combing and drying of raw jute, and that would necessitate the removal of the jute every day from the main building to the

yard or elsewhere, which would involve a very heavy expenditure. The proposed conditions had been taken, with that one exception, from those in the present Act. In the second condition it was stated that "such jute warehouse, and the buildings therein, shall be supplied with solid doors or gates, which can be securely closed." He was aware that the Port Commissioners had a building in which they certainly violated the condition that the beams should be of iron; but, on consideration by the Justices, they allowed a license, believing that iron was not a really necessary material. But the warehouse had solid doors, which were shut up at night, and ventilation was thereby shut out from the jute stored in the building. The consequence was, that many complaints were made that the want of ventilation was very injurious to the jute.

In the third condition it was proposed that "no artificial light" should be introduced. Now one of the great objections to the operation of the Act was that in consequence of this prohibition work could not be carried on at night.

Then, the hon'ble member opposite (Mr Dampier) observed that no consideration had been given to the question of the storage day by day of small quantities of loose jute for the purpose of manufacturing rope. MR. SCHALCH thought there was a good deal in what had been urged in behalf of a provision of that kind by the British Indian Association; and he should like to see some provision made for this purpose, by referring the Bill back to the Select Committee, or by the subject being taken into consideration by an amendment being moved at the next meeting of the Council.

There was one other point which the hon'ble mover of the Bill had not noticed. It was proposed to lower the rates of fee by bringing them down to a fee of Rs. 150. MR. SCHALCH thought that the fee might be well lowered to Rs. 150 in the suburbs, and power had accordingly been given to the Suburban Municipality to that effect; but it would not be at all advisable to allow small storehouses to be set up in the town, where the risk of fire and the consequences thereof would be so much increased: for, while you kept the rate of fee considerably high, you had some safeguard against the erection of a number of small warehouses. But if you extended the rates of fee to small sums, you would have a number of small store-godowns springing up, and the risk of fire would be considerably increased.

He, therefore, was not in favour of the amendments which the hon'ble member (Baboo Doorga Churn Law) had proposed.

The HON'BLE MR. HOGG said, in reply to the Hon'ble Mr. Dampier's remarks regarding the application of the law to small quantities of jute brought in daily for the purpose of the manufacture of small quantities of rope or other articles of that description, that there had never been any practical difficulty in that respect. It was obvious that the bringing in daily small quantities of jute and other such articles was not within the meaning of "storing," and therefore it had not been the practice of the municipality to proceed against persons who carried on trade in such manner. However there could be no objection, if the hon'ble member preferred it, to introduce a section providing that the term "storing" should not apply to small quantities of jute, say two maunds, brought in for use from time to time.

The HON'BLE MR. DAMPIER said, after the explanation given to the Council, and the illustration brought forward of a jute warehouse which the hon'ble mover of the Bill had seen, and with regard to which, in his experienced opinion, absolutely no restrictive conditions would be necessary on behalf of the public, there remained no ground for the portion of MR. DAMPIER'S amendment which contemplated the setting out in the Bill of conditions which should be compulsory in all licensed warehouses. But still the objection remained that it would be more satisfactory to those engaged in the jute trade to know that they could not be taken by surprise by the imposition of any newly devised condition, and to have before them every possible condition which they could legally be called upon to observe. Therefore, he would change the form of his amendment, and would now move "that the Bill be referred back to the Select Committee, with instructions to define the conditions, all or any of which may be imposed on the grant of any license under this Act."

The HON'BLE BABOO KRISTODAS PAL said, the question before the Council was whether it should be left to the executive to prescribe the conditions under which licenses should be granted for jute warehouses. As he took the liberty on a former occasion to state his views on this point at some length, he would not tread over the same ground again; but he begged to observe that he entirely agreed that whatever restrictions the Council might determine to impose upon the grant of licenses, they should be embodied in the law, and that, as the hon'ble member to his right (Baboo Doorga Churn Law) had observed, it would be unconstitutional to pass any law providing penalties for offences which were not themselves defined in the law. It was true that the rules embodied in the amendment moved by his hon'ble friend were for the most part re-enacted from the existing law; but, as pointed out by another hon'ble member (Mr. Dampier), there must be some general rules laid down: and if the proposed rules did not meet the requirements of the case, they might be altered, amended, added to, enlarged, or otherwise modified; and if the Bill were sent back to the Select Committee for revision, they would consider the whole matter.

From the discussion which had taken place that day, it seemed that hon'ble members agreed that there must be some rules laid down, if not by this Council, then by the Municipal Corporations. Now, if those Corporations were in a position to lay down the rules, he did not see why this Council should be considered incompetent to perform that task. It was true that the same rules which might apply to Calcutta might not apply with equal force to the suburbs; and if the Select Committee were of that opinion, they might provide two sets of rules,—one applicable to the town, and the other to the suburbs. Such distinction between the town and suburbs already existed, because the same scale of fees did not apply to the town and suburbs; and in other respects also the law made distinctions between the town and suburbs. So much for the difficulty of legislating for the town and suburbs in the same Act.

He did not think the hon'ble mover of the Bill would maintain that any jute warehouse, though not open to any objection for the time being, should be entirely and for ever exempt from all control, supervision, or other legal restrictions: even the Cossipore institution, to which he had alluded, though

a model jute warehouse, ought not to be treated exceptionally, for although its construction or management might at present be not open to objection, still circumstances might arise which might render it necessary to bring that warehouse under the law. BABOO KRISTODAS PAL did not think that the Council would agree to a fast-and-loose system and allow any jute warehouse to be without the pale of the law; and that being the case, he thought the Bill ought to provide certain general rules, which might or might not be applicable in all cases, but which, at the discretion of the executive, might be wholly or partially extended, according to the circumstances or merits of each case.

As to the objection to lowering the rate of fee, on the ground of the encouragement it would give to the establishment of small buildings, he might observe that it would be optional with the Justices to license such places or not. If they found that a building, by its size and situation, was more liable to fire than another, the Justices need not grant a license; but he did not see any reason why the fee should not be lowered when the present rate admittedly pressed hardly on the proprietors of small buildings, and when a high scale was not needed, there being a large excess of revenue over expenditure.

After some further discussion the Hon'ble Baboo Doorga Churn Law's amendments were put and negatived.

The Hon'ble Mr. Dampier's motion "that the Bill be recommitted to the Select Committee with instructions to define the conditions, the whole or any of which may be imposed on the grant of any license under this Act," having been put, the Council divided—

Ayes—9	Noes—3
The Hon'ble Nawab Sayad Ashgar Ali.	The Hon'ble Mr Hogg
,, Baboo Kristodas Pal	,, the Acting Advocate-General
,, Baboo Doorga Churn Law	,, Mr Schalch.
,, Mr Brookes	
,, Baboo Juggadanund Mookerjee	
,, Mr Reynolds	
,, Mr Dampier	
,, Mr Rivers Thompson	
His Honor the President	

The motion was therefore carried.

On the motion of the HON'BLE MR HOGG, the Hon'ble Mr. Brookes and the Hon'ble Baboo Kristodas Pal were added to the Select Committee on the Bill.

The Council was adjourned to Saturday, the 27th February.

By order of THE PRESIDENT, the Council was further adjourned to Saturday, the 6th March.

Saturday, the 6th March 1875.

Present.

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Dilér Jung, C.S.I.

INSPECTION OF STEAM BOILERS.

The Hon'ble Mr. Hogg presented the report of the Select Committee on the Bill to amend Bengal Act No. VI of 1864, and moved that it be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Hogg also moved that the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Hogg then moved that the Bill be passed; and in doing so said that the Bill consisted of but one section, which gave power to the Lieutenant-Governor to revoke a boiler certificate already granted, or to be granted, on the ground of the incompetency of the person who had charge of the boiler to carry on his duties as such. The Select Committee, in order to provide against the too arbitrary exercise of the power by such officer as the Lieutenant-Governor might delegate in that behalf, provided that an appeal might be made to some officer appointed by the Government; and if he thought the man was competent, he was authorized to issue a certificate, and then it would be competent to the officer who had charge of the working of the Act either to grant a certificate or to allow a former certificate to remain in force.

The motion was agreed to, and the Bill passed.

SURVEYS AND BOUNDARY MARKS.

The Hon'ble Mr. Dampier said he had the honor to move that the Bill to provide for the survey of land and for the establishment and maintenance of boundary-marks, which had been for some days in the hands of the members, be read in Council. In asking leave to introduce the Bill, he had mentioned to the Council that much of the value of the survey operations in Bengal had been lost owing to the boundaries not being secured by marks on the ground after they had been ascertained and laid down by the survey officers; and sometimes after, in the process of the survey, they had been settled after much dispute.

For many years the Supreme Government had pointed out to the Government of Bengal that the provinces under its administration stood alone in that respect; that in all other provinces boundaries were secured by boundary-marks; and that the charge for erecting and maintaining them fell upon the land. The survey officers had long insisted upon the erection of boundary-marks as a necessary measure for the benefit of the landed classes, and the Government of Bengal was entirely in accord with the Supreme Government in the opinion which had been expressed: *first*, that it was a great waste of power making these surveys and letting the results of them be lost by not securing the boundaries by marks; and, *secondly*, that the expense of erecting and maintaining the boundary-marks should fall on the holders of land.

It having been decided to introduce a Bill to supply the want, the opportunity had been taken, in the second Part of the Bill, of declaring the power of the Government to order a survey to be made—either a general survey, as of a district, or a special survey, as of a tract of country, such as that now being carried on in the dearahs south of Goalundo for the identification of property, or such as was required in different parts of the country for irrigation purposes. Clauses empowering the Government to order such surveys had been introduced, because there had been a doubt whether the law, as it now stood, did expressly authorize the Government to undertake such surveys for any purposes except those of a revenue settlement. The clauses now proposed would do away with any doubt on this point.

The third Part of the Bill provided for the erection of boundary-marks.

It had always, in making a survey, been necessary to have temporary boundary-marks. The civil revenue officer first ascertained the boundaries, which the professional surveyor following him was to survey, and it was necessary, until they had been surveyed, to secure the recognition of them by the erection of petty mounds of earth,—works not of an expensive nature, but in regard to which the co-operation of the villagers and the people about the land was required. Sometimes, where the survey was unpopular, in consequence of its object not being understood, much difficulty had been caused by the removal of the temporary boundary-marks, the people destroying at night what had been set up in the day. That difficulty had been felt in Behar in the survey operations now going on there in connection with the irrigation works. Such mischievous proceedings could not be tolerated, and the Bill contained provisions which would check obstructions of that sort being put in the way of survey officers. Boundary-marks were, under the Bill, divided into temporary marks, which were required to be kept up until the survey was completed, or until permanent marks were erected, and permanent boundary-marks. The provisions of Part III had for their object to enable the Collector to get the temporary marks erected as easily and as promptly as possible with the assistance or by the agency of the local holders of land. They were to the effect that the Collector might call upon any occupant to erect such marks as were necessary, and to maintain and keep them in repair until the completion of the survey, or until the erection of permanent boundary-marks. Practically, in any particular length of boundary the Collector would call upon the man who had the

greatest influence in the locality and the greatest command of the necessary labour and materials. The use of the term "occupant" was in order to enable the Collector to call upon even a well-to-do ryot to put up temporary boundary-marks. If the ryot happened to be locally the most influential person as regards any particular length of boundary, then the Collector would call upon him rather than upon the absent zemindar, who was perhaps only an annuitant upon the land.

Then, again, on the survey being finished, the Collector might call upon the occupant to put up permanent boundary-marks. As the Bill stood, it provided that the expense neither of the temporary nor of the permanent boundary-marks should rest eventually on the person who had been required to erect them. It was to be refunded to him; and the Select Committee, to whom the Bill would be referred, might perhaps think it proper to go further and to provide for an advance being given to the occupant, so that even in the first instance the expense might not fall upon him.

The Bill, as it stood, provided that, as soon as the occupant had put up either temporary or permanent boundary-marks, he was to give to the Collector a Bill for the amount of expenses incurred, and the Collector, after satisfying himself that the charges were reasonable, was to pay the amount. As soon as the Collector had ascertained the whole cost of the boundary-marks put up by the occupant in any convenient tract of country, or the amount he had himself disbursed in that behalf, if he had himself erected the boundary-marks, he would proceed to assess the cost upon the different estates, including the lakhiraj tenures, within which any lands had been distinguished by marks, proportionately to the interest which each had in the boundary-marks put up. In making this assessment, much must of course be left to the discretion of the Collector, everything would depend upon the circumstances of each case.

Having assessed the sum which each estate was bound to pay to refund the Government the cost of erecting the boundary-marks, the Collector would proceed to allot the sum so assessed on each estate amongst those who held permanent tenures therein superior to those of occupancy ryots, and the zemindar, who was bound to pay that lump sum to the Government, would have the same powers given to him for recovering the quota due to him by the different tenure-holders as he had in respect to the recovery of rent from them.

The exact mode of assessment upon the tenure-holders was a difficult question; so difficult, that it seemed to MR. DAMPIER impossible to lay down any general rule upon the subject. It appeared to him that the Collector who knew the locality would be the best judge as to what would be a fair proportion for the tenure-holders to pay according to the situation of the tenures themselves. In some cases it would be simple enough: for instance, where a zemindar had let his whole estate in putnee, and the putneedar again let in durputnee, the latter was obviously the man upon whom the chief expense should fall, and not the zemindar or the putneedar, who would probably, however, have to pay a trifling amount, as representing the contingent benefit they derived in virtue of their position as annuitants upon the estate. But other cases would

not be so simple: for instance, the adjustment of the proportions payable respectively by the holder, on the one hand, of a small tenure, of which the boundary marched for some length with that of the mouzah or estate, which boundary was therefore actually demarcated by the boundary-marks of the mouzah, and on the other hand by the holder of a tenure which was situated in the centre of the mouzah, and which, therefore, received a less direct benefit from the erection of the boundary-marks.

The fifth Part of the Bill provided that the Collector, if he came across boundary disputes in the course of his survey, should have the same power of deciding such disputes as he had in cases of settlement; and not only would he have such powers if he came across a case of disputed boundary in the course of a survey, but also if, where the boundaries had once been marked, a dispute arose in consequence of the marks having become obliterated, the Collector might, of his own motion, call upon the parties concerned and say—"We have once decided this boundary and secured it by marks, but you have allowed those marks to be obliterated; we shall again identify the boundary and you must again erect marks."

He would next notice the provision contained in section 32. Under the general law of limitation, when an award was made by the revenue authorities in the course of a settlement (survey officers protessed to act under setttlement powers), the parties aggrieved need not bring their civil suit to reverse the award of the revenue officer until three years after the date of the award. The result was frequent alterations in survey maps and records of property after they had been completed, and was productive of much inconvenience, which was brought prominently to the notice of the Government by the Board of Revenue. After consideration and discussion, the Lieutenant-Governor for the time being decided that SIX months would be a sufficient time to allow for the institution of a civil suit to reverse the award of a revenue officer. It might be objected that this Council had not that power in regard to the law of limitation; but MR. DAMPIER thought that if hon'ble members who felt a doubt upon the subject would look into the Limitation Act, they would find that there was specially reserved the power to make special limitations in special cases.

The last point that remained to be noticed was in section 36. The Supreme Government was very decided that the operations now being carried on in Midnapore should be made permanently useful by the erection of boundary-marks, and they agreed to advance the money necessary to erect boundary-marks, *pari passu* with the survey in the field season just past, on the distinct understanding that provision should be made in the Bill which was to be introduced for the recovery of the amount so advanced in accordance with the practice of other provinces.

He would repeat what he had said in his previous speech, that there was no idea of going over the old ground which had been already surveyed for the purpose of putting up boundary-marks. It was a great pity that boundary-marks had not been put up; but to go over the old ground again for this one purpose would do more harm than good. Therefore this Bill would only at present come into practical effect in Midnapore, in the survey of

which there were about two seasons' work left, and in the dearahs below Goalundo now being surveyed, and probably it would be used for the irrigation surveys which were being carried on in Behar; and also when the Government had a resettlement of their own estates to make, as in Khoorda or in Orissa, it would certainly cause the boundaries, when once ascertained and settled, to be secured by marks. He was not aware that any other operations were now immediately contemplated to which the Bill would apply.

The Hon'ble Baboo Kristodas Pal said there were three or four important points involved in this Bill: *firstly*, the erection of boundary-pillars; *secondly*, the cost of erection and its apportionment; *thirdly*, the recovery of the cost; and *fourthly*, the question of appeals. As regards the erection of boundary-pillars, the hon'ble mover of the Bill, both when he asked for leave to introduce the Bill and on the present occasion, had clearly elucidated the necessity of doing so: in fact the survey was incomplete without proper demarcation of plots of ground by boundary-pillars, and it was to be regretted that this idea was not carried into effect whilst the survey was going on throughout the country. Practically, as had been pointed out by his hon'ble friend, the benefit to be derived from this Bill would be limited to one district only, or rather to one-half of it, namely Midnapore. The survey had been completed for the rest of the province, and it would entail enormous cost if the work were to be done over again. The survey operations, as the Council were well aware, had been very expensive, not only to the Government, but to all classes of the people interested in the land, and the re-survey of the country could not therefore be carried out without calling into being the many evils which flowed from the first undertaking. But where the survey must be made, it was certainly desirable that demarcations should be effected by the erection of boundary pillars: in fact, the erection of such pillars formed part and parcel, as it were, of the survey system. At the same time he should observe that the benefit expected from this Bill could not be realized in all cases: for the minute and frequent sub-division of property in this country was a great obstacle to the permanency of land-marks. What might be considered permanent marks to-day, might in five years have to be changed in consequence of change of ownership in the same property by the natural operation of the Indian law of inheritance. This was particularly the case with small holdings which were not hampered by a cumbrous partition law. As regards large estates, partitions were not so frequent, simply because the *butwarrah* law was an almost insuperable obstacle in the way; but this obstacle would to a great extent be removed by the proposed simplification of the *butwarrah* law. Nevertheless the object of the Bill was good; demarcation of lands by boundary-pillars would be beneficial, and, he hoped, would prevent the frequency of boundary disputes, which at one time use to flood our Courts.

The next point was as to the cost of the erection of boundary-pillars. He confessed that opinions differed on that point. It was urged on one side that the survey was an imperial work; and as the demarcation of lands by the erection of boundary-pillars formed a part and parcel of that work, the State ought to bear the cost of such demarcation and erection. On the other side

it was argued that the landholders benefited by the demarcation, and therefore it was but right and proper that they should pay the cost. He submitted that much might be said on both sides of the question. It was true that in all other provinces save Bengal the cost of demarcation was paid by the landholders; but because the Government followed a different principle in other parts of the country, it did not necessarily imply that that principle was right. It should be borne in mind that the State as landlord was interested in knowing how the lands were distributed, and that therefore it ought to bear the cost of demarcation. In private estates in Bengal the zemindar had no power under the law to levy the cost of a survey from the ryots, and the reason was obvious—it was the interest of the zemindar to see how the lands were distributed and parcelled out. Private landholders were undoubtedly interested in the demarcation of the land by boundary-pillars, but the Government was also similarly interested. When estates were sold for default of payment of revenue, if there was not this demarcation of land by boundary-pillars, the new purchaser was put to great difficulty, and the Government was bound to point out to him the land which it had sold. If the Government failed to identify the estate, the sale would become void. He believed there had been some cases of small estates in which the Government could not identify the land, and that consequently the sale became null and void. Then, again, in the case of the dearah lands or alluvial lands, the Government was equally interested as the private landholder. In cases of the formation of *chur* land, the Government had a right to make a fresh assessment; the zemindar also could claim an abatement of revenue where the land was washed away. It not unfrequently became a matter of dispute between the Government and the private landlord in identifying lands so washed away or so newly formed. It was consequently the interest of both in this wise to see proper boundary-marks put up and maintained for the purpose of future identification of the lands, and it was therefore equitable that the cost should be distributed between the private landlord and the Government.

Then the Bill provided that tenure-holders and other ryots having beneficial interests in the land ought to be made to contribute to the cost of the erection of boundary-pillars. The provisions of this Part of the Bill had been taken from the Embankment Act. Now in the case of embankments, the benefit from such works to parties beneficially interested in the land could be distinctly defined, but he did not think that in cases coming under this Bill the benefit could in all cases be so distinctly traced and described. He admitted that where an entire estate had been let out by the zemindar in putnee, and by the putneedar in durputnee, and by the durputneedar in seputnee, and so on, the under-tenure-holders ought to be made to contribute, because the zemindar and the sub-tenure-holders (except the representative in the last degree) were in such cases mere annuitants: but it was a question for consideration whether all persons, having a beneficial interest in land, however their holdings might be situate, should be made to contribute, though they might not derive any direct benefit from the erection of the boundary-pillars, or though the benefit might be infinitesimal—perhaps more imaginary than real. As hon'ble members were aware,

the survey had been made estate by estate, or mouzah warry. Now there might be numerous tenures or holdings comprised within the estate or mouzah; it might be necessary to erect boundary-pillars at the junctions or borders or parting lines, or where the lands of one estate might be dovetailed into those of another; the only tenures or holdings which might be benefited by the erection of the boundary-pillars would be those which would lie near the boundary line. Would it, under such circumstances, be fair and just to tax all holdings of a permanent nature alike when the benefit derived was not alike? Those whose lands abutted upon the boundary line were directly interested in the establishment and maintenance of boundary-marks, whilst those whose lands were far away from the boundary-towards the centre of the estate or any other part would have little or no interest in the erection of the boundary-marks. It was therefore worthy of consideration whether all persons having a beneficial interest in lands in the estate so demarcated should be made to contribute. Moreover the rule of proportion laid down in the Bill did not seem to be clear. The hon'ble member said that it was a difficult subject, and he therefore proposed to throw the task upon the Collector. That officer being upon the spot, would be in a better position to adjust the proportion of interest of the persons benefited by the erection of boundary-pillars. He did not deny the truth of this; but he thought the Council ought to consider whether all persons should be taxed for a work the benefit of which they did not share alike, and whether it would be right in principle to leave it to executive officers to vary the rule of proportion according to their varying judgment.

With regard to the recovery of the cost, he observed that it was proposed to recover it as an arrear of revenue, and to authorize the sale of the estate for default in payment. He submitted that it was not proper or reasonable to proceed at once against the land in case of default of payment of such demands as these. If the moveable property of the debtor was not sufficient to satisfy the claim, it would then be right to proceed against the land. His Honor the President was aware how tenderly the land was dealt with in northern India, but here, Baboo Kristodas Pal regretted to say, an opposite feeling prevailed. Almost every demand of Government was converted into a revenue demand, and the land was sold outright for default. He would therefore suggest, for the consideration of the Select Committee, whether it would not be better to treat this as a State demand and recover it under the certificate procedure, in the same manner as the Council had lately enacted for the recovery of famine advances. It might be easily imagined that the moveable property in cases coming under the Bill would generally be sufficient to satisfy the demand; but if it was not sufficient, then the land might be sold; but he held that it was a questionable policy to sell the land primarily to satisfy a demand which was not, strictly speaking, a revenue demand.

With regard to the question of appeal, he confessed he was not in favour of a multiplicity of appeals, and he entirely went with the hon'ble mover of the Bill in reducing the number of appeals in respect of boundary disputes. At present two appeals were allowed, but under this Bill only one appeal would be allowed from the Collector to the Commissioner; but he was sorry to observe

that the Board of Revenue, to whom a second appeal lay, had been deprived of the general power of superintendence and control in proceedings connected with decisions upon boundary disputes. He was of opinion that this general power of control and supervision should not be taken away from the Board. He would not certainly allow parties to appeal to the Board as a matter of right, but leave it optional with the Board to exercise the power in those cases in which they might think fit. There might be cases of peculiar hardship in which the Board might think fit to interfere; but under section 36 the Board would be precluded from exercising such a power.

As for the limitation of time, he observed that the Board of Revenue were divided in opinion. Mr. Money held that it would be amply sufficient to give parties dissatisfied with the decisions of revenue officers in boundary disputes six months' time within which to institute a suit in the civil court; whereas Mr. Campbell, the other Member of the Board, thought that one year ought to be allowed: He was inclined to support the view taken by Mr. Campbell. BABOO KRISTODAS PAL thought six months too short a time, and that it would be quite sufficient to reduce the present period of three years for the institution of a civil suit in a boundary case to one year, as suggested by Mr. Campbell.

The HON'BLE MR. DAMPIER said the first point he should notice of those which had been brought forward was the argument that the demarcation as well as the survey was a matter of imperial interest, and therefore the expense should fall upon the Government; or, to substitute another word, upon the general tax-payers rather than upon the landholders. Now, he thought there was a distinction in this respect between the general survey and record of the allotment of the land to the different estates to which it appertained on the one hand, and on the other the demarcation by boundary-marks on the ground of those estates and other local divisions of land which came under such survey. The former process was certainly a matter of general interest and of general statistical utility, which gave it an imperial character. For instance, the record of the distribution of the land in Tirhoot among estates and proprietors would be a matter of interest to the statistician, not only in Tirhoot, but in Chittagong; whereas the securing the boundaries between the different estates and tenures on the ground was a question of purely local interest: it concerned only the local landholders. And so it seemed to him that there was a distinction between the character of the survey operations and that of the operations for securing boundaries on the ground, which fully justified the cost of the former being treated as an imperial charge while the expenses of the latter were localized.

The hon'ble member who spoke last had next said that tenures within an estate might be very differently affected and interested in the demarcation of the particular portion of the boundary of the estate; that one tenure might be situated at the heart of the estate at a distance from the boundary, another might abut on the boundary, and therefore in the demarcation of that portion of the estate, the boundary would be *pro tanto* a demarcation of the tenure itself. MR. DAMPIER was not quite certain that he understood his hon'ble friend,

but he seemed to say that for these reasons the holders of tenures should not be made to contribute to the expense of erecting boundary-marks. If the hon'ble member's meaning was so, MR. DAMPIER could not follow the argument at all. All that had been said seemed to him to point to the conclusion that the greatest latitude must be given to the authority who was in the best position to make a fair assessment with reference to all the local circumstances. If one tenure might be situated on the boundary of an estate, and another at some distance from it, towards the centre of the estate, the officer making the allotment would find that the holder of the tenure situated on the boundary of the estate was much more benefited and interested in the erection of the marks, and ought therefore to bear a higher proportion of the expense than the owner of the tenure situated in the centre of the estate. But it seemed to MR. DAMPIER that no central authority could possibly lay down rules for these matters. If the Select Committee could devise any lines to guide the Collector in the apportionment of the expense, he should not oppose such lines being introduced in the Bill; but he thought it would be found practically impossible to do so.

The suggestion made that the recovery of these expenses should be dealt with, not as arrears of land revenue, but as demands due to the State, MR. DAMPIER thought was worthy of consideration by the Select Committee, and he should be fully prepared to consider it there.

Then the hon'ble member did not approve of the Board's right of supervision being withdrawn in cases of boundary disputes. The principle upon which the Board acted generally, where a discretional power of supervision was given, was this. Where the order of the revenue authorities was final, as in cases of butwarrah, the Board always went carefully into objections and looked into the case with a view to correcting any defects which they might discover; but where the award of the revenue authorities was only provisional, and where the law provided a remedy in the Civil Court to upset that award, the Board were less willing to interfere. Whatever the Board might do, or might not do, a dissatisfied party would still be sure to go to the Civil Court ultimately, and therefore in cases of that description the Board generally refused to interfere with the quasi-judicial award of the Collector and Commissioner. The Bill followed the same principle.

As to six months being too short a period to allow for the institution of a civil suit to contest the award of a revenue authority, he had in this matter followed the recorded decision of the Lieutenant-Governor for the time being, who passed an order that when a Bill was brought in on this subject, the period of six months should be adopted as the limitation of time for the institution of a civil suit. Personally MR. DAMPIER was inclined to agree with the hon'ble gentleman that one year would be a more proper time to fix. The Select Committee would probably consider the point, and would come to a proper finding.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristodas Pal, and the mover.

The Hon'ble Mr. Dampier.

REGISTRATION OF JUTE WAREHOUSES.

THE HON'BLE MR. HOGG presented the further report of the Select Committee on the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and moved that it be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. HOGG also moved that the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Section 1 was agreed to.

Section 2 having been read—

The HON'BLE BABOO KRISTODAS PAL moved that in clause (7) of section 2, below the figures "250," the figures "200" be inserted. This point, he said, was considered in Select Committee, when some of the members were of opinion that the present minimum rate of fee was quite low enough. But there was a difference of opinion, and he therefore thought fit to give notice of the amendment. He submitted that the present minimum was too high. It was not needed for purposes of revenue, because the working of the Fire-brigade Act for the last two years had left a surplus of nearly Rs. 60,000: on the other hand, it pressed very severely and unnecessarily on the proprietors of small warehouses. It was urged that the lowering of the minimum rate of fee might encourage the establishment of small jute warehouses, which would be a source of danger to property in their vicinity; but he believed that the rules for the grant of licenses contained in section 7 would prove sufficiently discouraging to the establishment of small warehouses, and the Justices would have sufficient discretion in licensing places for the storage of jute. So, all things considered, he thought that the minimum rate of fee was too high, and would therefore propose to reduce it to Rs. 200.

The HON'BLE MR. HOGG said he was decidedly opposed to the amendment proposed by his hon'ble friend. The objection to the present minimum rate was that it pressed too severely on small warehouses. He submitted that it was not desirable, especially now, when we were relaxing many of the restrictions which had hitherto hampered the jute trade, to allow small warehouses to exist in the Native part of the town. If a jute warehouse was not sufficiently large to enable it to afford to pay the minimum fee of Rs. 250, he thought it ought not to be allowed to be used for the purpose. We wished to restrict the trade to large warehouses and properly constructed buildings, and on that ground it appeared to him that a fee of Rs. 250 was by no means too large.

The HON'BLE MR. SCHALCH said he fully agreed with the hon'ble mover of the Bill. He considered that all warehouses of the class which would apply for a license of Rs. 200 would be a source of great danger to the town, and he would certainly wish to see houses of that kind excluded from the town. There was ample space in the vicinity of the town for the establishment of warehouses of this description, where they were not so much a source of danger, and where the minimum fee at present was Rs. 150, and where also he saw a further amendment, to be proposed by the hon'ble mover, would enable the Municipal

Commissioners to reduce it to Rs. 100. It was better that houses of that class should be driven from the town and confined to the suburbs, where the risk to valuable property was not so great.

The Hon'ble Mr. Reynolds said he did not think it was a matter of great importance whether the minimum fee were fixed at Rs. 250 or at Rs. 200; but on the whole he thought it better to adhere to the present rate of Rs. 250. It appeared to him that the tendency of the diminution of the minimum amount would be to lower the character of the buildings used as warehouses. It might be said that the Justices were at liberty to refuse a license to a building not constructed on the conditions specified in the Act; but he would appeal to the hon'ble mover of the amendment whether the exercise of that discretion did not place the Justices in an invidious position, by calling upon them to refuse a license to a building the construction of which the action of the legislature had encouraged by the reduction of the minimum amount of fee.

There was one other matter as to the minimum fee on which he thought the Bill was liable to misconstruction. By the 7th clause of section 2 provision was made for the imposition of four specific rates of fee for the grant of licenses, and in a subsequent part of the section it was provided that the Justices might alter the amount of fee to be paid—

[The Hon'ble Mr. Hogg explained that that provision would be modified by an amendment which he intended to propose.]

The Hon'ble Mr. Reynolds expressed himself satisfied with the explanation.

The Hon'ble Mr. Hogg said he was going to suggest that in the concluding clause of this section, after the words "amount of the fee," should be inserted the words "in accordance with the rates hereinbefore mentioned." As it now stood, the Justices might think that they were at liberty to alter the rates to other rates not in accordance with the rates fixed by the section; and although he was advised that the clause as it stood was hardly open to that construction, it was wise to remove all possible misapprehension by introducing the words which he had suggested. That, he thought, would meet the objection of the hon'ble member who had last spoken.

The Hon'ble Baboo Kristodas Pal said the objection taken to his amendment was simply this, that the lowering of the fee would encourage the establishment of small jute warehouses—an objection which he had anticipated in his opening remarks. He begged to point to clause 3 of the section under consideration, which sufficiently provided against the establishment of warehouses of the class to which they were referring. That clause provided that space should be reserved on land appertaining to the jute warehouse for the loading and unloading of carts. That provision could not be complied with by the proprietors of small jute warehouses; it would be incumbent on the Justices to see that warehouses were provided with sufficient space for loading and unloading, and the amendment could not therefore be said to have a tendency to encourage the establishment of small warehouses. Strictly speaking, if the lowering of the fee were carried, it would only apply to the small warehouses which now existed; and as it was not the object to suppress these, he did not see on what principle of justice the benefit was

denied to them, if it was admitted that these small warehouses were not sufficiently remunerative to enable the owners to pay a fee of Rs. 250. It was true that they did pay the fee at present, but it pressed severely upon them; and he thought that in justice to the proprietors of small warehouses the fee ought to be reduced.

The Council then divided:

Ayes—4	Noes—6
The Hon'ble Nawab Syud Asghar Ali	The Hon'ble Mr. Brooks
,, ,, Baboo Kristodas Pal	,, ,, Baboo Juggadanund Mookerjee
,, ,, Mr. Dampier	,, ,, Mr. Reynolds
,, ,, The Advocate-General	,, ,, Mr. Hogg
	,, ,, Mr. Schalch
	,, ,, The President

The motion was therefore negatived, and the section was passed with the amendment referred to by the Hon'ble Mr. Hogg.

Section 3 having been read—

The Hon'ble Baboo Kristodas Pal proposed to withdraw the next two amendments in his notice.

The Hon'ble Mr. Hogg said he thought it would be desirable for the hon'ble member to proceed with the next amendment of which he had given notice, and which was—

"That in section 3 the following words be added:—

"The Justices may from time to time, as they may think fit, at a special meeting, alter the amount of annual fee, to be paid in respect of any jute warehouse for which a license has been heretofore granted."

The Justices, according to the present Act, would have that power with regard to licenses hereafter granted; but as that section would not, he was advised, have retrospective effect, it was necessary in section 3 to add words to the same effect as in section 6, as that would enable the Justices to revise the rate of fee when imposed on existing warehouses. He would therefore adopt the amendment of his hon'ble friend, adding to it the words "in accordance with the rates heretofore specified" after the words "amount of annual fee."

The Hon'ble Baboo Kristodas Pal then moved his amendment with the addition suggested by the Hon'ble Mr. Hogg.

The motion was agreed to.

Sections 4 and 5 were agreed to.

Section 6 having been read—

The Hon'ble Baboo Kristodas Pal said if the hon'ble member in charge of the Bill was willing to reduce the fee in the suburbs, he would move the next amendment standing in his name, namely that in the second paragraph of section 6, the words "and fifty," wherever they occurred, be omitted.

The Hon'ble Mr. Hogg said he saw no objection to this amendment, as the objection which applied to small warehouses in the town could not be urged with the same force as regards the suburbs, more especially as the Municipal Commissioners of the suburbs had asked to be allowed a latitude in granting licenses at fixed fees.

The Hon'ble Baboo Juggadanund Mookerjee thought a discretion should be given to the Municipal Commissioners of the suburbs, and if the amendment was carried, he believed it would be in accordance with their wishes.

The motion was agreed to.

Sections 7 and 8 were agreed to.

Section 9 having been read—

The Hon'ble Baboo Kristodas Pal moved that the following words be added to the section :—

"Provided that there shall be no double conviction in respect of the same matter both under this and the last preceding section."

His object in moving this amendment was that no two persons should be punished for the same offence. He thought it would be quite sufficient for the purposes of this law if one person were fined for the offence committed, whether he were the occupier of a warehouse, the owner, or any person who infringed the conditions under which the license was granted. This provision was rendered the more necessary by the section of the Bill which declared that where a warehouse was let out in portions, the owner should, for the purposes of the Act, be considered to be the occupier. In such cases the occupier might infringe the law, and the owner might have no control whatever over the occupier's actions. If, however, the Justices could fix the responsibility on the occupier of the particular portion of the premises in which the offence was committed, Baboo Kristodas Pal did not think it would be consistent with justice to proceed against the owner. But if the occupier could not be got at, it would be reasonable to prosecute the owner and punish him. Take another case; a coolie smoked, and he ought to be punished for the offence he committed. Baboo Kristodas Pal did not see why the owner of the warehouse should be punished for the commission of acts which were not strictly under his control. If there was any neglect on the part of the occupier or the owner, there was provision for the cancellation of his license. He believed the object of the Bill would be sufficiently attained if one person, either the owner or the occupier, or any other person convicted of infringement of the law, were punished; but to say that two persons should be punished for the same offence, was not a provision that could be considered sound and equitable.

The Hon'ble Mr. Hogg said he was not prepared to accept the amendment. He thought the hon'ble member had in a measure misapprehended the bearing of the section. It was not intended by either section 8 or section 9 to punish the owner. By section 8 the person punishable was distinctly stated to be the occupier, and the object was to guard the owner from the vexatious prosecutions to which he had hitherto been subject. According to the sections as they stood, the occupier was rendered liable to punishment and also the person who actually infringed the law. Mr. Hogg did not see that it was at all inconsistent that the occupier, who had the management of the property, should be held responsible for the primary control of the establishment under his charge, and that the person who had actually infringed the law in consequence of the lax management of the occupier, or in opposition to his direct orders, should also be liable to punishment. In that we followed the principle of

the Penal Code, where the person actually committing an offence and the abettor were both liable to be punished. A similar provision was to be found in the law for the prevention of gambling. Under that law the owner of the gaming-house was held liable for allowing gambling to go on in his house, and the persons engaged in the gambling were also liable to punishment. MR. HOGG therefore trusted the Council would not relieve the occupier from the very proper responsibility imposed upon him by this section. It was the responsibility of controlling his establishment in accordance with the law passed by this Council; nor should they relieve the person actually infringing the law from being liable to punishment for the offence committed by him. He thought that if his hon'ble friend had examined the sections carefully, he would have seen that it was not intended to impose a penalty on both the owner and the occupier, and he would then, in all probability, not have brought forward this amendment.

The HON'BLE BABOO KRISTODAS PAL said that, in reply to what had fallen from his hon'ble friend (Mr Hogg), he would point to the concluding words of section 4 of the Bill, which were as follows:—

"If any jute warehouse is let out in portions, the person so letting it out and entitled to the rent shall, for the purposes of this Act, be deemed to be the occupier."

He had referred to cases coming under that provision. Here the owner was deemed to be the occupier; and as his hon'ble friend had observed that the owner had very little control over the occupier, the responsibility should not be fixed upon him; but where the occupier could not be got at, the owner ought certainly to be held liable. BABOO KRISTODAS PAL would not relax the provisions of the Bill in the slightest degree, but would only ask the Council to consider whether it was equitable to provide that more than one person should be punished for the same offence.

The motion was negatived, and the section agreed to as it stood.

Section 10 was agreed to.

On the motion of the HON'BLE MR. HOGG the following words were added to section 11, in order to guard against acts already done being interfered with by that section:—

"Except as in this Act expressly provided, nothing in this Act contained shall affect anything done under the Jute Warehouse and Fire-brigade Act, 1872."

The rest of the sections, the schedule, and the preamble and title, were agreed to.

On the motion of the HON'BLE MR. HOGG the following words were added to section 6:—

"For which a license has been heretofore, or for which a license may hereafter, be granted."

The HON'BLE MR. HOGG said that as this Bill had been some time before the Council and also before the public, he would, with His Honor the President's permission, move that the Bill be passed as it had been settled in Council that day.

His Honor the President said that as this Bill had been twice before the Select Committee, and as its terms had been very carefully considered by the Council, he thought there could be no objection to the Bill being passed that day, if it were the pleasure of the Council to do so.

The motion was carried and the Bill passed.

The Council was adjourned to Saturday, the 13th instant.

Saturday, the 13th March 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Dilér Jung, C.S.I.

PARTITION OF ESTATES.

The Hon'ble Mr. Dampier moved that the Bill to make better provision for the partition of estates paying revenue to Government in the Lower Provinces of the Presidency of Fort William in Bengal be read in Council. The Bill, he said, had been prepared in accordance with the permission given by the Council some weeks ago, and had been some days in the hands of hon'ble members. He did not for one moment say that it had been in the hands of the members for the number of days necessary for the careful consideration of its details. The nature of the Bill was such that he should be obliged to tax the time and attention of the Select Committee very much in regard to it. It was a Bill of details, and contained many intricate points which had been the subject of much discussion. He proposed, after the Bill should have been referred to a Select Committee, to call the special attention of those officers to it who were engaged in administering the butwarrah law and had had experience of its working, in order that they might give the benefit of their opinions to the Select Committee. The Committee would then give close attention to the clauses of the Bill, and he hoped by the end of the year to arrive at the end of the journey on which the revenue officers had been travelling for the last thirty years towards the amendment of the butwarrah procedure. It was impossible for him to attempt to explain clause by clause each of the changes in the existing law which was made by the Bill, so as to be intelligible to hon'ble members who were not familiar with the subject. He would therefore

merely point out the main features of the changes which were proposed to be made. He said on a former occasion that the two objects of the Bill would be to expedite the procedure and to give a definite expression of what the legislature really intended on the numerous points which had been the subject of doubt and litigation under the existing law.

Section 4 imposed two limitations on the right of applying for partition. The first of those limitations was that the applicant must be under engagement to the Government for the payment of revenue; a recusant proprietor who had refused to engage would not be entitled to apply for partition. That was one of the points which had been under the existing law the subject of difference of opinion. Then in the latter part of the same section it was provided that "no application for separation should be entertained the result of which would be to form one or more separate estates, each liable for an annual amount of land revenue less than ten rupees," unless the proprietor of such small share agreed to redeem his revenue. This provision was new, or rather it was a return, to a small extent, to the principle which was acted on years ago. It was found that estates in Tirhoot and other districts were being so divided and subdivided under the process of butwarrah, that in some cases the cost of the butwarrah was out of all proportion to the value of the estate. If the process was allowed to continue, these districts would be cut up into small holdings similar to those of the Sylhet district. There was so much public inconvenience and expense connected with this minute subdivision of estates that it was considered right to place a limit to the extent to which it might be carried, and in doing so a very low limit had been taken. Under the old law to which he referred, no estate could be created by subdivision against which the revenue demand would be less than five hundred rupees. But in framing this Bill he had kept much below that point; and the Bill imposed no restriction upon subdivision as long as no new estate was created against which the revenue demand would be less than ten rupees, and even then the prohibition was not absolute. Any one might have a partition of an estate of which the annual jumma was one rupee if only he would agree to redeem the revenue by a capitalized payment calculated at twenty-five years' purchase.

The fifth section was intended to meet a practical difficulty which had been often found to arise. A, the proprietor of an estate, alienated a specific portion of it to B, with the express condition that B should pay annually one hundred rupees out of the entire Government demand for which A's entire estate had been liable. The contract was clear enough in both its provisions, and B acquired a right to those lands and none other, and he undertook a liability to pay one hundred rupees a year, neither more nor less. Under the butwarrah law as it now stood, when, by the course of time and circumstances, the representatives either of the seller or the purchaser found it to be to their advantage to do so, they would come forward and claim a partition with the obvious object of getting the sudder jummas and the lands of the respective shares redistributed, so as to be in exactly the same relative proportion to one another in spite of the express conditions of the contract. Mr. Dampier himself believed that under such circumstances an applicant had no *locus standi*. He

himself should say to the applicant—"You have made a contract with stipulations in it which are such as to prevent the law being applied, and by doing that you have precluded yourself from taking advantage of the general permission which the law gives to divide estates." However, under the existing law doubts and questions were raised, and Section 5 was intended to make the matter clear. If a private contract stipulated for the payment of such an amount of jumma in respect of the interest transferred as the Government could not accept in view of the safety of the public revenue, then the parties to such contract and their representatives would forfeit their right to claim partition.

Then followed some procedure sections, of which the main object was to oblige persons to come forward with their objections promptly instead of hanging back till the last possible day. When the Deputy Collector or Collector was just about to close his proceedings and to send up the papers, in would come the agent of one of the parties and make objections, and then the whole thing had to be re-opened. Very often that was done with the sole object of causing delay.

A material change made by the procedure sections was as to the position of the Ameen. Under the existing law the Ameen had a definite status: he was the recognized officer, with functions vested in him by law, and especially he had the function, after measuring the estate, of initiating and suggesting the mode of partition. It rested with the Ameen to suggest whether the boundary between the new estates should be made to run from north to south or from east to west, and to prepare the papers accordingly. This was a great and most dangerous power to leave in the hands of an officer of that class, and laid him open to almost irresistible temptation, for this point was often the point of contention and importance in the proceedings.

Under the present law all these and many other important functions were left to the Ameen; but under the Bill the Ameen was reduced to the status of a mere executive officer for the measurement of the land and preparation of the detailed papers in accordance with the orders of the Deputy Collector. The direction in which the estate should be divided, and other matters of importance, were to be initiated as well as settled by the Deputy Collector subject to the approval of the superior revenue authorities. The Deputy Collector would have to take as active a part in the conduct of the butwarrah as he now had to take in a settlement proceeding for the assessment of the Government revenue.

Section 16 laid down the procedure for parties making a separation amicably without the interference of the Deputy Collector, save so far as was necessary for the safety of the public revenue; and then there were a few sections providing for the decision of any point arising in the course of partition which the parties might wish to refer to arbitration.

Section 31 cleared up a doubt as to cases in which a person held neither a joint undivided share in a whole estate, nor certain specific lands only out of the estate, but a joint and undivided share in certain specific lands only. It had been the subject of discussion and litigation whether a person so circum-

stanced could apply for butwarrah. It seemed to MR. DAMPIER that there was no difficulty in carrying out such a butwarrah, and therefore he had provided a section laying down that the owner of such an interest should be entitled to partition.

Section 32 related to the case of what were known as mushtarak lands, where the proprietors of an estate, out of whom one or more applied for butwarrah, held certain lands in common with the proprietors of another estate, of which no butwarrah was contemplated or desired. It was now considered that, where there were such common lands, the fact of the proprietor of an estate not under butwarrah having an interest in such land was sufficient to bar the application for butwarrah of the other estate. That appeared to MR. DAMPIER and others to be an unnecessary restriction. At any rate, where a few fields only were held in common, it would be no great hardship on the proprietors of the estate who did not seek a butwarrah to be obliged to submit to a partition as regards those fields only.

Section 34 laid down a distinct procedure with regard to disputed boundaries. This and some other sections contained provisions barring persons (even third parties) for ever from asserting claims if they did not do so while the butwarrah was in progress. These provisions would require special attention from the Select Committee.

He might mention here that the Bill as now presented to the Council followed chiefly the draft made by Mr. Money two years ago, which again was founded on the North-Western Provinces' Butwarrah Act, passed about twelve years ago for the very purpose of remedying the defects and supplying the deficiencies of the Acts now in force in Bengal. That Bill was very carefully considered in the Council of the Governor-General, and passed for the North-Western Provinces only. As this Council had just then been constituted, the Governor-General's Council would not make its Bill applicable to Bengal, considering it more fit that the Local Council should deal with the matter as regards Bengal.

Section 35 also settled a point upon which there had been much discussion, as to how the tenure-holder would be affected if a butwarrah took place of an estate, one of the proprietors of which, while holding the estate in joint tenancy, had created a lasting tenure, such as a putnee or the like. Section 35 provided distinctly that such tenures would follow the share of the proprietor who had created them, and would be confined to the specific land assigned to the person who had created the tenure. The tenure-holder would have no right to interfere in the lands assigned to other shareholders.

Section 52 was also to meet a practical difficulty, where a butwarrah was found to be absolutely impracticable,—where there was a physical impossibility in carrying it out. Under the present law, a butwarrah proceeding once formally instituted could not be got rid of without the consent of all concerned. There was no procedure by which it could be struck off the file. The Section of the Bill provided that when such practical difficulties arose, a butwarrah might be struck off the file with the sanction of the Commissioner.

Section 61 vested the officer conducting the butwarrah with certain powers as regards pronouncing upon the title to lakhiraj tenures, and other questions,

which the Collector already exercised in the course of a settlement. It was absolutely necessary that a Collector should have these powers in butwarrah cases also, because at every turn some question might arise which it was absolutely necessary to decide before the butwarrah proceeding could be terminated.

With these remarks he moved that the Bill in its present state be read in Council.

The Hon'ble Baboo Kristodas Pal said he believed he did not exaggerate when he said that this was one of the most important Bills that had ever been laid before this Council. It was a complex subject, still more complicated by the cumbrous machinery of the law. A clear and interesting history of legislation on this subject was given by the hon'ble mover of the Bill when he asked for leave to introduce it. The partition law dated from 1793, the birth-year of the permanent settlement, and he might say of the reign of law in this country. Modifications were made in it from time to time, when the law was as it were consolidated by Regulation XIX of 1814. That law had not been since materially changed. Slight alterations were made in it by Act XX of 1836 and Act XI of 1838. Such had been the course of legislation on the subject. The working of the law had been most unsatisfactory. It had been most harassing, dilatory, and expensive. The difficulties of the work had arisen chiefly in connection with the apportionment of the Government revenue to different parts of the estate sought to be separated. It necessitated elaborate inquiries, and the Council knew well what a wide door it opened to chicanery, corruption, and extortion. Not only was money squandered away like water, but sometimes serious breaches of the peace were committed, and even blood was shed. Years and years would elapse, and yet the battle of partition would not come to an end. If the law ever helped the strong to prey over the weak, it did notably in this case: and, be it remembered, the fault did not lie with the executive, but with the law. So far back as in 1848 a most vigorous protest was made against the present state of the law, as stated by the hon'ble mover, by Mr. Forbes, the then Collector of Rajshahye, and since then the volume of official opinion against it had gone on increasing. Baboo Kristodas Pal therefore hailed with pleasure the proposed Bill to amend and simplify the law of partition, and he thought it could not be placed in better hands than in those of his hon'ble friend, who possessed a rare knowledge of the working of the revenue laws of Bengal.

A simplification of the law of partition would be in unison with the improved ideas of the people regarding the possession and management of property. Many were the social advantages of the joint-family system in vogue in this country; but the modern idea of individualism, fostered by western education and example, was sapping the foundation of that patriarchal state of society. There was now a spirit abroad that each should take care of himself; that each should employ his own talents, energies, and resources to the best advantage: and that each should enjoy the fruits of his own capital and labour. We did not feel called upon to discuss here the moral aspect of the question—whether the changed feeling would make men more selfish and tend to destroy

the many amiable virtues which the joint-family system undoubtedly engendered and fostered. But it could not be denied that society would greatly gain by the dissemination of a spirit of self-reliance and enterprise, which was a natural sequence of the idea of individualism, struggling for mastery over the native mind. The spread of this idea was a broad social fact, which nothing could gainsay and nothing could resist; and it was therefore meet that the legislature should second it by simplifying the law of partition.

The present Bill, as had been remarked by the hon'ble mover, was a Bill of details, a discussion of which would find a proper place in the sittings of the Select Committee. Too much care and attention could not be bestowed upon the settlement and elaboration of those details. Many important and complicated interests hinged upon the details of the Bill, and he was glad to receive the assurance of the hon'ble mover that it would not be passed in haste. This was only a preliminary stage of the measure, the object being to elicit public discussion of its provisions.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Mr. Reynolds, the Hon'ble Baboo Juggadanund Mookerjee, the Hon'ble Baboo Kristodas Pal and the mover, with instructions to report in six months.

The President directed that the Bill be published in the *Gazette* in English and in the vernacular.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Dampier applied to the President to suspend the Rules for the conduct of business to enable him to move for leave to bring in a Bill to amend and consolidate the law relating to municipalities within the territories subject to the Lieutenant-Governor of Bengal.

His Honor the President having declared the Rules suspend—

The Hon'ble Mr. Dampier then moved for leave to bring in the above Bill, and in doing so, said he had just had to speak on a subject which was *terra incognita* to such hon'ble members as were not engaged in the revenue administration of the country. He now came to an old friend who was very well known to the Council. In 1868, in asking leave to introduce the District Towns' Bill, he had recapitulated the history of municipal legislation in Bengal from the earliest time; so that he need not inflict it upon the Council again. He would take up the status which existed in 1868. Two laws were then, practically speaking, in operation: one, the District Municipal Improvement Act III of 1864 of this Council, and the other the Chowkeedaree Act XX of 1856. The former of these laws was applicable, and was intended to be applied, only to such towns as were really in the first class of advancement, speaking from the Bengal point of view, such as sudder stations. The mode of taxation in such municipalities was an advanced one: it was a percentage on a careful valuation according to the probable sum for which each holding would let, and the whole organization of the Act was in the same key. Considerable powers were vested in the Municipal Commissioners, and it was

assumed that they would take great interest in, and be capable of managing, the affairs of their town. The other Municipal Act in currency at the time was XX of 1856. That was the Chowkeedaree Act. It did not affect to do more than to provide the means for paying and controlling an urban police, as contra-distinguished from a rural police, in such places as were just above the line of agricultural villages. Anything which deserved the name of a town required a special police organization superior to that which sufficed for country hamlets, and that was given by Act XX of 1856.

It provided a punchayet to assess the tax and look after the chowkeedars. The Act just recognized conservancy by saying that if there happened to be any surplus from the money raised, such surplus was to be used for conservancy. But it did not affect to provide for conservancy.

Thus in 1868 there was only a Municipal Act for first class advanced towns, and a Chowkeedaree Act for places which were just above the rank of agricultural villages.

But it was evident that between those two classes of places there lay a wide belt, embracing towns which were so far advanced that the Chowkeedaree Act did not meet their requirements, and which were yet not so far advanced that they could be created full-blown Municipalities under the District Municipal Improvement Act. Sir William Grey's Government determined on the introduction of a law to fill up this gap; and Mr. Dampier had the honor of introducing and carrying through the Council the Bill which became Act VI of 1868. By that Act the tax to be imposed was not upon a strict valuation of property, but it was the old rough mode of taxation,—the mode which had been familiar to the people for years, and which was in force under Act XX of 1856: namely a tax according to the circumstances and the property to be protected of the people liable to the tax. One of the great objects in framing this law was that its provisions should be elastic—that a town which was just a little more advanced than those to which Act XX of 1856 was applicable might be brought under the District Towns' Act as it was called, and in it the powers of the municipal body might be very much restricted by the Lieutenant-Governor under the authority which the Act conferred upon him. As the municipal body became educated in self-government, more able to manage for itself and to run alone, the Act enabled the executive Government to remove one restriction after another, and to give to it extended powers, until the town reached the first grade of those to which the District Towns' Act was applicable, and then the theory was that the town would be promoted over the line and be placed under the District Municipal Improvement Act, and would then become a full-blown Municipality.

He thought that the working of the District Towns' Act had not been unsuccessful: there had been no complaints against it save such as were inseparable from all Municipal Acts. One proof of its successful working might be gathered from the following figures:—In 1872 twenty-six towns were under the operation of the District Municipal Improvement Act, and forty-four places under the Chowkeedaree Act of 1856: while within the four years from the

passing of the District Towns' Act ninety-four towns had been brought under its operation.

While the District Towns' Act and the District Municipal Act were working side by side, they brought to light new requirements—Municipalities under the higher Act wanting to adopt something which their Act did not allow, but which they saw towns under the District Towns' Act enjoy; and towns, on the other hand, under the Act of 1868 wanting to adopt something which their Act did not admit, and which the District Municipal Improvement Act did provide. As an instance of the first, several Municipalities under the higher Act complained that the system of assessment on a strict valuation of property was not applicable to the circumstances of their rate-paying population, and pressed unequally upon them, and they thought it would be much better to have, as in the 'Towns' Act, an assessment upon the circumstances and the property to be protected of the persons to be taxed. Some of the towns under the Act of 1868, on the other hand, contained a number of carriages and horses: they naturally thought that such luxuries ought to be taxed for the benefit of the Municipality. But, unfortunately, as the law stood the tax on carriages and horses could not be introduced into towns under that Act, although it might be introduced into Municipalities under the Act of 1864.

Thus it became evident that what was required was to weld the two systems together into one, which should embrace all Municipalities, and leave each municipal body to select such provisions out of those which the law provided as were good for its own purposes, and to reject such as are not applicable to its own circumstances. He need scarcely remind the Council that in December 1871 Mr. Bernard presented a Bill so welding the existing laws together and providing one general law for all Municipalities. The Bill gathered up all municipal legislation into one, and provided for the repeal of no less than fourteen Acts scattered about the Statute Book. There were Acts for raising funds and keeping up the roads of this place; there were Acts for the sanitation of that place, and Acts for the better order and government of a third place, and so on. All these Acts were to be wiped out, and Mr. Bernard's Bill contained provisions in place of them all. Besides this mere consolidation into one system, Mr. Bernard's Bill provided for several improvements which were generally admitted to be necessary and desirable. For instance, there was a provision that municipal bodies might devote some of their funds to improving the water-supply; there was a provision enabling the Lieutenant-Governor to allow any Municipality to elect their own Commissioners, and the Commissioners to elect their own Vice-Chairman. Up to that time these privileges could only be given to towns under the Act of 1868, and not to Municipalities under the higher law. Hon'ble members were aware that the Bill provided also for certain other points. As the Bill he now introduced did not touch those points, he need not refer further to them. Some of the points in Mr. Bernard's Bill did not meet the approval of His Excellency the Governor-General, and the Bill was vetoed. His Excellency took the opportunity to mention that certain amendments might, with great advantage, be made in the law. Sir George Campbell subsequently addressed the Council on the

subject, and said he would leave to his successor the task of enacting a consolidated municipal law; and eventually a short amending Act was passed providing for those points only which were generally accepted as desirable.

The present Government had now determined to undertake the task of consolidating the existing municipal law. It would be the object of the Bill which MR. DAMPIER was about to introduce to avoid the general objection which was made to the vetoed Bill, on the ground that its general tendency was to increase municipal taxation. He should wish to guard himself against being understood to say that in no single instance would the population of any town have to pay more than it already paid; but the object of the Bill would not be to increase taxation. It would not be open to that general objection. The Bill would adopt those taxes only which were familiar to the country and in force in different places now. The scheme of the Bill was to make different provisions, out of which each Municipality should select for itself those which were considered good for it, and reject those which were considered not to be applicable to its circumstances. As regards the one principal tax which would provide most of the funds in the Municipalities, it was proposed to allow an alternative. Each Municipality might elect whether it would have the tax upon the value of holdings, as in the District Municipal Improvement Act, or the tax upon persons, according to the circumstances and property to be protected of those liable to the tax; and for each of these two taxes it was proposed to retain the maxima which the existing law now imposed.

In regard to other matters, the Bill would be, generally speaking, a consolidation and reproduction of existing provisions. No radical change would be made, for instance, in the relations of the municipal police and the general police of Bengal. Objection had been taken to the changes in this respect which the former Bill provided.

The opportunity would be taken to make amendments on points on which amendment was clearly required, but the general object would be to avoid novelty. His Honor's Government was fully aware of the delicacy of the subject of municipal legislation. It was aware that any step forward, however good it might be, was sure to meet with disfavour from the less intelligent part of the population to whom such measures would apply; and he believed he was expressing the policy of His Honor's Government rightly when he said that while it would discountenance and resist to the utmost anything like a retrogade movement in municipal government, feeling that even a real improvement and reform would certainly first be unpalatable to the less intelligent of those who would be affected by it, it would be particularly anxious that no step forward would be made without the real concurrence of the more intelligent and educated classes, and that the advantage to be gained by every step to be made in advance should be so thoroughly capable of proof as to secure the support of the more intelligent and thinking persons who were in the habit of giving their attention to these things.

With these remarks he would ask leave to bring in the Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 20th instant.

Saturday, the 20th March 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Rivers Thompson,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Dilér Jung, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

The Hon'ble Mr. Dampier moved that the Bill to provide for the voluntary registration of Mahomedan Marriages and Divorces be further considered in order to the settlement of the clauses. In explanation of these frequent amendments which he had to propose, he might mention that the Bill was one which had excited much interest amongst the Mahomedans, and was receiving much personal attention from His Honor the President. His Honor had taken the opportunity to consult the leading Mahomedan gentlemen of Calcutta. Moonshee Ameer Ali, who was well known to this Council, went up to Behar, and there ascertained personally the opinions of the chief Mahomedans in the parts which he visited; and the result of all these inquiries and examinations and discussions was to strike out here and there some new light, and to suggest amendments which really did not materially affect the Bill, but which would have the effect of allaying doubts and misgivings which were entertained by persons of different classes as to the effect of the Bill.

The Hon'ble Mr. Reynolds said, before the Council proceeded to the settlement of the clauses of the Bill, he would ask permission to make a few remarks on the Bill in its general provisions. Having been for some years in charge of a large district, in which about two-thirds of the people were Mahomedans, he could add his testimony to that of others who had spoken of the urgency and importance of a measure of this kind. In the district of which he spoke, and generally throughout Eastern Bengal, complaints of offences punishable under Chapter XX of the Indian Penal Code were lamentably frequent, and they were a class of cases with which a Magistrate very seldom felt himself able to deal in a satisfactory manner.

He did not say that all the complaints that were made of this kind were made in good faith. Some were brought out of enmity; others were made with the object of extorting money; and others by persons who, by their own misconduct, by neglect, or cruelty, or desertion, had justly forfeited the rights which

they sought to enforce. But when every allowance had been made for cases of this kind, there still remained a considerable residuum of genuine complaints, in which a real injury had been suffered and redress was really sought for; and Mr. Reynolds felt bound to add that in many instances redress was not obtained.

The complaints were generally of two classes—either charges of bigamy, or charges under section 498 of the Penal Code, of enticing away or detaining a married woman with criminal intent.

The defences that were ordinarily set up were either a denial of the marriage, or a plea that a divorce had been pronounced. When the defence consisted of a denial of the marriage, it was a matter of great difficulty for the complainant to bring such proof of the marriage as would satisfy the Court. The evidence of his relations and friends who declared that they were present at the marriage was set aside as the testimony of interested witnesses, and he was called upon to produce independent evidence, which generally meant the evidence of the Moollah by whom the marriage had been performed.

It was not always that the parties could produce the Moollah before whom they were married, and when he was produced his evidence was very often unsatisfactory. He had to trust to his recollection in the matter, as he kept no registers, and he had no better testimony than his own statement of the fact of the marriage and the identity of the parties with those before the Court.

Evidence of that kind naturally broke down on cross-examination, and the Magistrate, harassed by contradictory evidence, felt bound to give the prisoner the benefit of the doubt and to dismiss the case, though he might perhaps feel some lurking uncertainty whether he was thus doing substantial justice. But in some cases the fact of the marriage was too notorious to be denied, and then a plea of a divorce having been pronounced was set up, and evidence was brought forward to support it. The complainant was not prepared with rebutting evidence, and the charge was dismissed.

These were real evils for which the Bill would provide a cheap and popular remedy. When a marriage had been registered under the Act (if the Bill should pass into an Act), it would not be open to the parties to deny the fact of the marriage; and with regard to divorces, if a divorce was not registered, the Magistrate would look with suspicion on the evidence adduced to support the plea of divorce, or would at all events be inclined to scrutinize it very carefully.

He was about to add that the Select Committee had, in his opinion, done wisely in maintaining the time-honoured title of "Kazi" as the designation of the registering officer, but he observed that the hon'ble member in charge of of the Bill had an amendment upon the paper providing that the designation of "Mahomedan Registrar" should be substituted for the term "Kazi." It was therefore premature for him to say anything upon that point until the Council had had an opportunity of hearing the arguments which would be brought forward in support of the amendment by the hon'ble member in charge of the Bill. He thought, further, that the Select Committee had done wisely in making the Bill permissive. That so important a contract as marriage

should be registered, and that the registration should be compulsory, might theoretically be advisable; but he believed it would be generally agreed that the country was not ripe for such legislation, and that it was prudent to make this, in the first instance at least, a voluntary measure. He was glad to be able to believe that the Mahomedan community generally had received the Bill with favour. He was aware that some objections had been made, but he thought that these had been made by persons who had only imperfectly acquainted themselves with the provisions and objects of the Bill. He was satisfied that in Eastern Bengal at any rate the measure would be generally acceptable, and he believed that its working would be extremely beneficial.

The HON'BLE NAWAB SYED ASHGAR ALI said that he observed with regret that Mahomedans of all classes, both Sunnis and Shiahs, were not very agreeable to the passing of this Bill. Some gentlemen felt objections to some of the clauses regarding which he saw that amendments were to be proposed. He had also heard that there was a memorial from certain inhabitants of Behar, asking for a delay of six months or so before the Bill was passed; and he thought that sufficient time should be allowed to enable Mahomedan gentlemen, both Sunnis and Shiahs, to make any representations that they might consider necessary. At the same time, it appeared to him that the Bill should not be confined to Bengal, as he observed it was proposed to do by an amendment on the paper, but should be made to extend to all the provinces under His Honor's administration. If the operation of the Bill were to be restricted, as was proposed to be done, to what was known as Bengal proper, the Council would not have the advantage of the opinions of the inhabitants of Behar. He thought, therefore, that the Bill should be left, as it was now, a general Bill; and he would also suggest to His Honor that a little time should be allowed for the consideration of the Bill, during which time he himself proposed to make all the inquiries he could, and prepare a report expressive of the views not only of the Mahomedans in Calcutta, but in other parts, to which he intended to proceed on the close of the sittings of the Council, and lay it before His Honor before the next session.

The motion was agreed to.

The HON'BLE MR. DAMPIER said the first amendment he had to propose was that throughout the Bill the words "Mahomedan Registrar" be substituted for the word "Kazi." In Select Committee he had been against the use of the term "Kazi" in the Bill, because he thought it was apt to lead to misapprehension. It was a term which, amongst the Mahomedans, was identified with very much larger functions than the limited duties assigned to the officer under this Bill, and therefore he thought that the alteration of the term "Kazi" to "Mahomedan Registrar" was advisable, as tending to prevent misapprehension. He was out-voted in Select Committee, and did not think the point of sufficient importance to moot again in Council. But His Honor the President's opinion being with him, he now ventured to propose the amendment to the Council.

HIS HONOR THE PRESIDENT said he would explain the reason for the substitution of the term "Mahomedan Registrar" for "Kazi." It was just

this, that in the first place the word "Kazi"—interpret it how you might, and restrict the meaning how you might—did bear a certain amount or degree of religious significance. Though his functions under the Act might be confined to those of a civil nature, yet there was something of a religious character in the very term "Kazi;" and His Honor need not tell the Council how very important it was to omit anything from the Bill which had a quasi-religious character. The Council were aware that there used to be the office of Kazi established by the law and practice of the country, and that the functions of the Kazi used to be somewhat of a religious character; and partly on that ground they were abolished by imperial legislation. Well, after such abolition, for a local Council to pass a Bill having that word in it, notwithstanding the restricted civil meaning attached to it, must bring their Bill into a certain collision with an imperial Act, and such a contingency might endanger the Bill being assented to. So, although they would be glad to meet the wishes of their Mahomedan friends by inserting the word "Kazi," he thought hon'ble members would see that when there were doubts, *first* as to the religious meaning of the word, and *secondly* of the possibility of our Bill conflicting with an imperial Act, as a matter of judgment and discretion, the members would perhaps consent to the omission of the word for fear that it might endanger ultimately the passing of the Bill.

The motion was agreed to.

The Hon'ble Mr. Dampier said the next amendment which he had to move was the result of the collection of opinions made in Behar. It was clear that the circumstances of Behar as regards the need for the Bill were directly opposed to those of Eastern Bengal. In Eastern Bengal this Bill was most cryingly required: in Behar it did not seem to be required at present, and, not being required, there was no reason for creating the disturbance of public opinion which its introduction would cause. Therefore it was proposed, instead of making the Bill at once applicable to all the provinces under the Government of Bengal, that it should be extended in the first instance to Bengal proper, a discretion being left to the Lieutenant-Governor to extend its provisions afterwards, when circumstances might make it desirable to do so, to the provinces of Behar and Orissa. The amendment Mr. Dampier had to move, therefore, was that the following words be prefixed to section 1—

"This Act extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of Bengal, except Behar and Orissa

But the Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend it to Behar and Orissa."

The Hon'ble Nawab Syed Ashgar Ali said that his objection to the amendment was that, if the Bill were to be settled as applying only to Bengal, the Council would not, as he had before observed, have the advantage of learning what were the opinions and feelings of the people in Behar and Orissa. But if the Bill were made applicable to Bengal, Behar, and Orissa, and not only to Bengal, we should have the benefit of opinions from Mahomedans of all places, and there would be no necessity to go over the whole work again when it was considered advisable to extend the law to Behar and Orissa.

His Honor the President.

His Honor the President observed that the Council would have the opinion of the people of Behar and Orissa whether we extended the Bill at once to those provinces or not. Even if the amendment before the Council were adopted, the people of Behar and Orissa would have an opportunity of considering its provisions.

The Hon'ble Mr. Hogg asked what were the grounds of objection to the Bill being extended to Behar? He thought the Council would be in a better position to vote upon this amendment if they were made acquainted with the grounds of objection contained in the memorial that had been referred to.

The Hon'ble Mr. Dampier said he had not seen the memorial to which the hon'ble member referred. But the ground upon which it was proposed to except Behar and Orissa from the operation of the Bill immediately upon its passing, was that the practical difficulty which the Bill was intended to meet had not been met with in those provinces,—the difficulty of proving cases of breach of the marriage contract. The people of Behar in effect said—"Our circumstances do not require this Bill, and we would rather not have legislation upon this subject introduced at all." As to Orissa, he believed the matter had not been objected to formally: but the fact was that the want of such a measure had not been felt in Behar and Orissa.

The Hon'ble Mr. Hogg observed that if there was no objection to the course proposed, he thought it would be satisfactory to the Council that the Behar memorial should be printed and circulated before this amendment was passed. The Council would then be in a better position to judge of the advisability of confining the operation of the Bill in the first instance to Bengal.

After some further discussion the further consideration of the amendment was postponed.

The Hon'ble Mr. Dampier moved the introduction of the following amongst the interpretation clauses in section 1:—

"'Purdah nishin' means a woman who, according to the custom of the country, might reasonably object to appear in a public office."

He had been informed by several Mahomedan gentlemen that young married women, though not strictly speaking purdah nishins, would be extremely unwilling to appear at the Registrar's office. It was with that intention that he proposed to relax the interpretation of the term "purdah nishin." The amendment was obviously open to criticism, on the ground that under the proposed interpretation any woman might be allowed to appear by vakil instead of in person; but Mr. Dampier believed that no practical harm would accrue from the relaxation of the requirement that the woman should appear in person; the vakil would probably ordinarily be a relation, and he believed that an appearance by vakil would be quite as safe and as little open to abuse and false personation as if the woman herself appeared. If *mala fides* arose afterwards, the woman who attended personally was quite as likely to deny her identity as she was to deny the authority of the vakil who had represented her.

The Hon'ble Mr. Hogg said the proposed interpretation would not only include a woman of rank, who, according to the custom of the country, might reasonably object to appear in public, but would include any young girl who might choose to

object to appear at a public office. He submitted that every young woman of whatever rank, would, according to the custom of the country, object to appear in a public office. He would suggest that the principle of the Registration Act should be followed, under which those who did not wish to appear at a public office might apply for the appointment of a Commission to effect the registration of the marriage.

The HON'BLE THE ACTING ADVOCATE-GENERAL said women who went to market and appeared in public before their neighbours would object to appear at a public office. If that was the intention, he certainly would object to the amendment, as the object intended to be secured was the identity of the person who happened to go before the Registrar to be married. He thought the subject should be further considered, as it was likely, if this amendment were adopted, that one of the great objects of the Bill might be frustrated.

The HON'BLE MR. DAMPIER explained that the object of the proposed interpretation was to relax the well-understood meaning of "purdah nishin." If you made the definition of the word tight, according to the ordinarily accepted meaning of the word, purdah women who did not like to appear at a public office would simply not go before the Registrar, and the voluntary provisions of the Act would not be taken advantage of. It had been strongly urged upon him by Mahomedan gentlemen that there were a great number of women who went about their household business to market and elsewhere, but would yet object to appear at a public office. If you did not allow these women to appear by vakil, they would not go through the expense of a Commission, and would not avail themselves of the provisions of the Act, and the object of the Bill would be frustrated; whereas, if these women were able to send their vakils to effect the registration, the thing would be done without objection, and the provisions of the Act would be made use of.

After some further discussion, the Council divided:—

Ayes—9.	*No*—1.
The Hon'ble Nawab Syed Ashgar Ali	The Hon'ble the Acting Advocate-General.
The Hon'ble Baboo Kristodas Pal.	
The Hon'ble Baboo Jaggadanund Mookerjee.	
The Hon'ble Mr. Reynolds.	
The Hon'ble Mr. Hogg	
The Hon'ble Mr. Dampier.	
The Hon'ble Mr Thompson	
The Hon'ble Mr Schalch	
His Honor the President	

The motion was therefore carried.

On the motion of the HON'BLE MR. DAMPIER, verbal amendments were made in section 10.

On the motion of the ACTING ADVOCATE-GENERAL, section 24, which provided that a Kazi should be, and be deemed to be, a public officer in the service of Government, was amended so as to stand thus:—

"Every Mahomedan Registrar shall be, and be deemed to be, a public officer, and his duties under this Act shall be deemed to be public duties."

On the motion of the HON'BLE MR. DAMPIER, the following clause was added to section 16:—

"In the town of Calcutta, every Mahomedan Registrar shall perform the duties of his office under the superintendence and control of the Inspector-General of Registration."

For the saving clause, section 25, the following was substituted, on the motion of the HON'BLE MR. DAMPIER:—

"Nothing in the Act contained shall be construed to—

(*a*) render invalid, merely by reason of its not having been registered, any Mahomedan marriage or divorce which would otherwise be valid;

(*b*) render valid, by reason of its having been registered, any Mahomedan marriage or divorce which would otherwise be invalid;

(*c*) authorize the attendance of any Mahomedan Registrar at the celebration of a marriage, except at the request of all the parties concerned;

(*d*) affect the religion or religious rites and usages of any of Her Majesty's subjects in India;

(*e*) prevent any person who is unable to write from putting his mark, instead of the signature required by this Act."

After the insertion of an inadvertent omission in schedule (*c*), the further consideration of the Bill was postponed.

IRRIGATION AND CANAL NAVIGATION.

The HON'BLE MR. DAMPIER moved that the Bill to provide for Irrigation and Canal Navigation in the Provinces subject to the Lieutenant-Governor of Bengal be read in Council. When he asked the permission of the Council to introduce a Bill regarding irrigation in Bengal, he said that the existing Acts applied to Orissa only, and that in Midnapore the works had been carried out without any Act applicable to those works. It was then intended that the Bill should be applicable only to Bengal proper and to Orissa, leaving Behar (in which it was proposed to work the irrigation on a somewhat different system) to be provided for by subsequent legislation. Since then, however, the requirements of Behar had been under consideration, and he hoped the Council would not object to the introduction of this Bill as one applicable to all the provinces under the Lieutenant-Governor's control. At present there was no Act to regulate the powers of officers of the department and the rights of individuals in that connection. The present Bill, which had been for some days in the hands of the members, followed generally the scheme of the irrigation and Canal Act of the North-Western Provinces which was passed by the Council of the Governor-General, and which MR. DAMPIER was informed had worked well. He had rejected some of the provisions of the North-Western Provinces' Act, because they were not applicable to Bengal, and were not required; and he had omitted others because this Council had not power to legislate as the Council of the Governor-General did on those points: for instance, the provisions of the North-Western Provinces' Act trenched upon some of the provisions of the Land Acquisition Act in regard to compensation. Such legislation was beyond the competence of this Council. He had provided in the Bill that compensation should always be given in accordance with the Land Acquisition Act. Then he had omitted the provisions imposing an owner's rate upon the zemindar,

which were in force in the North-Western Provinces, as the Government did not wish to extend them to Lower Bengal, and he had also omitted the provisions regarding forced labour, which were necessary where there was a sparse population, but were not required in Bengal.

The second Part of the Bill gave power to the Government to take up existing channels and to utilize them for purposes of irrigation, giving compensation under the Land Acquisition Act to those whose rights were affected. The third Part conferred upon canal officers certain powers as to surveys for canals and for keeping canals up when made. It also provided for payment of compensation for damage done. If the parties accepted the compensation offered, well and good; if not, the amount of compensation was to be settled under the Land Acquisition Act. This Part provided also for applications for water and for the construction of water-courses at the cost of private individuals who required them, according to the system in vogue in the North-Western Provinces. That was not the system hitherto in force in Orissa and Midnapore, but in Behar it was proposed to follow that system. This part also provided for subsidiary arrangements as to these water-courses. To get the full benefit of irrigation it was occasionally necessary to use compulsion in taking possession of rights of private individuals in favour of other private individuals. Sometimes it was necessary to interfere in a trifling degree with the rights of one individual for the purpose of securing to others very great benefits from the use of water. When that was done, the private rights which had been interfered with would be fully paid for. It would be observed that this Part required that provision should be made for the convenience of the public in crossing canals and channels at the expense of the Government, or of those for whose benefit the channels were kept up.

In the fourth Part of the Bill it was provided that the Lieutenant-Governor might make rules regarding the supply of canal water; but the Bill laid down certain conditions restrictive on the department as to the supply of water. The officers of the department could not, for instance, arbitrarily cut off the supply of water at their own discretion: the supply could only be withheld upon certain specified conditions stated in the Bill; and if the department failed to supply water under other circumstances, persons under contract for water were entitled to compensation.

The fifth Part provided that the rate at which water should be supplied should be fixed by the rules made by the Lieutenant-Governor, and provisions were made for the joint responsibility of the cultivators and those connected with the land for waste or the unauthorized use of water. These provisions were absolutely necessary, for sometimes it was impossible to find out by whose act the water was surreptitiously let out. It was easy, however, to find out whose land had benefited from the use of such water. The law imposed joint responsibility in that respect. In this Part it was also provided that canal officers might agree with a third person to collect the water-rate, and that the Government might require the zemindars to collect the rate from their ryots. This plan was not favoured in Midnapore: it was said that the ryots very much objected to it. In other parts it might be found acceptable and workable.

The Hon'ble Mr. Dampier.

As to the recovery of sums due, he had left the model of the North-Western Provinces' Act, and had retained the provisions of the existing Orissa Acts, which were more in detail.

The sixth Part provided rules for the navigation of canals and the realization of canal dues; and the ninth Part provided for the Lieutenant-Governor laying down subsidiary rules for the guidance of canal officers and the public in all matters connected with irrigation.

As soon as the Bill had been read and referred to a Select Committee, he proposed again to ask those officers who had practical experience on the working of the system hitherto in force, to give their opinions for the benefit of the Select Committee. With these remarks he begged to move that the Bill be read in Council.

The Hon'ble Baboo Kristodas Pal said the prosecution of irrigation works was a question of imperial policy, which did not fall within the scope of the deliberations of this Council. But past experience did not justify them to hope that financially these works were calculated to prove a great success. He perceived from the last Bengal Administration Report that the total outlay upon irrigation works, up to the 31st March 1874, was Rs. 3,15,18,966, and the total deficiency up to that date was Rs. 51,15,758; that was to say, Rs. 44,61,754 on account of interest, and Rs. 6,53,994 on account of current charges. These figures, he submitted, were the best evidence of the prospects of irrigation works in Bengal. He admitted that these works did good service in Midnapore and Behar in the drought of 1873-74, but even that service was very limited. He observed that this question was very ably and sensibly discussed in Sir George Campbell's Administration Report for 1872-73. Adverting to the outlay incurred, Sir George Campbell wrote:—

"It will be seen that the total expenditure will be enormous, while financially we have been most unfortunate. In Orissa the premature attempt to secure a large revenue ended disastrously, as explained in the last report, and caused much irritation and discord."

In Midnapore the works were more successful, but still not to the extent desired. As to that, Sir George Campbell said:—

"But unhappily all these prospects were darkened by a circumstance which the projectors of the canal do not appear to have taken into account, though it seems obvious enough. The supply of water in the river which feeds the canals failed in October and November, just when water was most wanted. Short rivers rising on the surface of dry uplands must fail when the rains fail. Though there was by no means so excessive a drought in Midnapore as in the rest of Bengal and Behar, the supply to the canal fell to 300 feet per second at the time when water was most necessary to the crops. This quantity will not suffice for much more than about 30,000 acres; so much was irrigated, but many applicants were sent away without water, and even to some of those to whom we had engaged to give it, a very short supply was available. It seems, then, that we cannot safely engage to irrigate very much more than 30,000 acres without the fear that we shall fail to do what we have undertaken to do in every dry season when the rains cease early. It is seldom that the water is an absolute necessity at any other time; and the serious question arises whether we can undertake to extend our irrigation subject to this risk, and how we are to distribute the supply when we have not enough for all.'

In Behar, as BABOO KRISTODAS PAL had already observed, the Soane Canal was of great benefit during the late drought, but even there the prospect was not all fair. Sir George Campbell remarked:—

"The Lieutenant-Governor believes that the Soane canals have really very much better prospects than the others, and that within certain limits their greater or less success is assured. Whether in ordinary years, when there is a full rain-supply, the people will consent to pay such rates as to render the canal remunerative, remains to be seen; but that the water will always be taken to a considerable extent, the Lieutenant-Governor has no doubt."

Sir George Campbell thus concluded:—

"Even if the Soane canals, kept within dry season limits, may eventually pay, it is Sir George Campbell's belief that almost all other canals which can be devised in those provinces will practically be of the nature of an insurance against bad years, rather than a profitable speculation in ordinary years. Can we impose an insurance rate on those who are benefited? Or is Government justified in spending great sums from the general revenues, not for profit, but to save life in years of failure? These are very perplexing questions. As regards the saving of life, the fever which has so often accompanied the canals must be taken into account. It may well be doubted whether the Ganges Canal most saves life or destroys it. Sir George Campbell had hoped that deltaic canals were free from this scourge, but he has lately seen that there are complaints of fever caused by the Godavery canals also."

Now, it would be seen from these extracts that, according to the late Lieutenant-Governor of Bengal, the prospects of irrigation in these provinces were very doubtful, and BABOO KRISTODAS PAL believed that all who knew the condition of the country and the requirements of the people would readily subscribe to that opinion. In Bengal in times past droughts used to occur at long intervals, but within the last ten years or so they had been more frequent. Since 1866, he could not say whether from atmospheric changes or what, drought had been more frequent in Bengal. Still it was a question of grave financial importance as to whether canals for irrigation should be multiplied and the general revenues burdened in the distant hope of meeting a drought which might occur once in eight or ten years.

He thought it proper to make these general remarks, as the Bill had been introduced with a preface that it was intended to extend these works to different parts of the country.

As regards the Bill itself, it was not clear whether the water-rate would be made compulsory or voluntary. He believed the hon'ble member intended that it should be voluntary; but as the Bill was framed, the point had not been made quite clear. For instance, there was no specific provision in the Bill that a contract should be made in all cases. On the contrary, section 27 implied that there might be no contract. It enjoined—

"In the absence of a written contract, or so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the Lieutenant-Governor in respect thereof."

This implied that there might or might not be a contract in all cases; and where there was no contract, it seemed to him there might be much misunderstanding and dispute. The Canal Department had not been popular, and he was therefore of opinion that as little discretion should be left to the canal officers as possible. Then it appeared from clause 6 of section 25 that, if it

was not intended to make the water-rate directly compulsory, it was intended to make it indirectly compulsory. The section said:—

"If any of the rules and conditions prescribed by this section are not complied with, or if any water-course constructed or transferred under this Act is disused for three years continuously, the right of the applicant, or of his representative in interest, to occupy such land or water-course, shall cease absolutely."

In other words, although the occupant might pay for the construction and maintenance of the water-courses, still if he did not take the water for three years successively he was to be deprived of the use of the water-course: that was to say, it would be confiscated. Now this provision had a direct tendency to make the rate compulsory, or rather to force water upon the occupant.

Then with regard to the liability for the waste of water, the hon'ble member had explained that where the party who wasted the water could not be identified, all the persons interested in the water-course should be held jointly responsible (sections 29 and 30 of the Bill). It was a well-recognized principle of criminal law that if a person committed a breach of the law, he should be personally and individually held responsible; but Baboo Kristodas Pal could not understand on what principle of justice a body of persons was to be held responsible for an offence committed by an unknown person.

It would be intelligible if the persons whose lands benefited were held responsible; but it was clearly unintelligible that all persons, whether their lands were benefited or not, should be held responsible because the canal officers were unable to find out the real offender.

The next point was as to drainage. He found that under section 25 private individuals, if they obtained a supply of water through a water-course, were to provide for the drainage of the places where drainage channels existed. But there was nothing in the Bill to show that the drainage of the villages would be kept intact where the canals were constructed at the cost of Government. He thought that this was a most important point, which ought not to have been lost sight of in a Bill of this kind.

The next point was as to compensation. The hon'ble member had explained that he had diverged from the North-Western Provinces' Act, which he had made his model, in granting compensation under the Bill. But on reference to section 8, Baboo Kristodas Pal found that it provided as follows:—

"The Collector shall proceed to inquire into any such claim which may be made under the provisions of the Land Acquisition Act, 1870, as far as they may be applicable, and to determine the amount of compensation, if any, which should be given to the claimant."

It was not clear from this provision whether the whole machinery of the Land Acquisition Act would be availed of in cases coming under this section, or whether the determination of the Collector would be final. Then came the collection and realization of the water-rate. Under section 23 it would be at the discretion of the Government to farm out the collection of the water-rate to any person. But section 37 provided:—

"The Collector may require any zemindar or other person under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Act by a third party in respect of any land or water in such estate."

The hon'ble mover had not given any reason why he wished to throw this new obligation upon the zemindar. There were many reasons why this obligation should not be imposed upon him. In the first place it was liable to be abused in the hands of an unscrupulous zemindar; in the second place, where the zemindar might not be exacting, and might fail to realize the rate from the ryots in due time, his whole estate would be held liable to sale as for an arrear of revenue: so the zemindar who would be charged with the liability for no benefit of his own was threatened, as it were, with the sale of his own estate for the debt of third parties.

This was scarcely fair or just. It was true that the collection of the road cess had been imposed upon the zemindar, but the object was not only to facilitate the collection, but also to prevent the fiscal agency from coming into direct contact with the ryots for the collection of the cess, and thus to obviate the annoyance, irritation, and oppression which generally resulted from this process. But the canal officers formed a distinct department, and they would more or less come into contact with the ryots; and he did not therefore see why the zemindars should be compelled to collect the rate for the Canal Department. The provisions of section 33, which declared that the collection of the rates might be farmed out, appeared to be quite sufficient. If a zemindar wished to take a farm of this kind, he would be quite welcome to do so, and it would be quite unobjectionable to employ his agency in such case. But he was not satisfied that any good reason existed for compelling the zemindar to collect the rate. In the interests of both the zemindars and the ryots, he thought that this section should be omitted.

Then, again, in regard to the mode of realization of the water-rate, it was provided in the first place that where the water-rate and other charges were to be collected by the Government, the same should be recovered as arrears of revenue. In the second place, where the rates were to be realized by a farmer, they were to be realized as a demand under Act VII of 1868; but where they were to be realized by the zemindar, they were to be realized as rents payable to him. As Baboo Kristodas Pal remarked at a previous sitting of the Council, he thought the less the legislature made the land liable for any and every demand imposed upon it, the better, so long as there were other valuable goods available for the realization of the dues of Government. If the immoveable property of the person liable to the water-rate was not sufficient to satisfy the demand, it would then be just and equitable to seize the land and sell it, but not otherwise. This objection was certainly obviated with respect to farmers under section 33, for in their case the water-rate was to be recovered as a demand within the meaning of Act VII of 1868. The farmer would thus have a facility in realizing the rate, but the zemindar must collect it as rent; and the Council were well aware what this meant. If the ryots did not pay, the zemindar must sue them in the civil court, and undergo the expense, trouble, and harassment of a wearisome litigation, and in the meantime pay in the amount from his own pocket.

The Hon'ble Baboo Kristodas Pal.

Then, with regard to jurisdiction under Part VII, it would appear that the jurisdiction of the Civil Court would be taken away with regard to the supply of water. The section provided that—

"Except where hereinotherwise provided, all claims against Government in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order."

This was circumscribing the jurisdiction of the Civil Court to the detriment of those who availed themselves of the Act. Then another question arose. The Council were aware that canals sometimes overflowed in the rains and did great damage to the crops. There was nothing in the Bill to show that in such cases those who might sustain damage from the overflow of water would have a claim against the Canal Department, and that the Civil Court would have jurisdiction in such cases. He did not know whether this section as it was worded would not bar the institution of such suits.

With regard to navigable canals, he had only to remark in conclusion that while the Bill provided penalties for the infringement of the rules, and made provision for the protection of canals, it nowhere provided that due facilities should be afforded for navigation. It imposed no obligation upon the Canal Department to provide facilities for navigation, though it authorized them to collect tolls and rents and to levy penalties.

The Hon'ble Mr. Dampier said he had only to say in reply that not one of the criticisms which the hon'ble member had addressed to the Council applied to any provision which appeared for the first time in this Bill. All the provisions on which the hon'ble member had remarked were borrowed either from the North-Western Provinces' law, which, as Mr. Dampier had said, had been found to work well, or from the existing Orissa law. The plan upon which he had prepared this Bill had been to take these two sets of laws as his models. Anything which palpably was not applicable or desirable for Bengal, was either struck out or modified. But any provisions which were open to a difference of opinion, he had retained with the object of securing the attention of the Select Committee to them, and of their discussing and seeing how far they were or were not applicable to the circumstances of Bengal. The Select Committee would, no doubt, consider the matter carefully with the assistance of the suggestions which they would receive from officers who were acquainted with the practical working of the department, and very probably the Bill would be presented by the Select Committee in a considerably altered and improved shape.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Schalch, the Hon'ble Baboo Kristodas Pal, and the Mover, with instructions to report in six months.

The Council was adjourned to Thursday, the 25th instant.

Thursday, the 25th March 1875.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble V. H. SCHALCH,
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble RIVERS THOMPSON,
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BHAHDOOR,
The Hon'ble BABOO KRISTODAS PAUL,
and
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

THE HON'BLE MR. DAMPIER moved that the Bill to provide for the voluntary Registration of Mahomedan Marriages and Divorces be further considered in order to the settlement of its clauses. As far as he was aware, only one clause remained to be considered, that of which the consideration was deferred at the last meeting of the Council. It was a proposal that at the commencement of section 1 the following words be inserted:—

"This Act extends, in the first instance, to the territories for the time being under the government of the Lieutenant-Governor of Bengal, except Behar and Orissa:

"But the Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend it to Behar and Orissa."

THE HON'BLE NAWAB SYED ASHGAR ALI said he had received copies of three memorials on the subject of this Bill since the last meeting of the Council: one, a memorial of certain Mahomedans of Bengal and Behar, one from Arrah, and one from certain inhabitants of Chinsurah and Hooghly; also a memorandum by Moonshee Ameer Ali, and a petition from a Kazi of Tirhoot. He would refrain from speaking on the motion before the Council until such time as three other memorials from some Mahomedan gentlemen of Sarun, Monghyr, and Tirhoot, which he was informed were about to be sent in, had been received. [HIS HONOR the PRESIDENT intimated that he had just received those petitions.] There were other memorials besides these, which he understood were to be presented to the Council from Mahomedan gentlemen in other places; and until they had been presented, he would refrain from speaking on the subject. He would, however, in accordance with the wishes which had been expressed to him by certain Persian gentlemen resident in Calcutta, move as an amendment that the further consideration of the Bill be postponed for a period of from two to six months, in order to enable them to prepare and present their memorials, which were not yet ready.

HIS HONOR the PRESIDENT said that the memorials to which reference had just been made were an additional one from the Behar Province, which was

very much the same as the one which had already been circulated to the Council; one from Monghyr, and another from Tirhoot. Two of these memorials were accompanied by an English translation, and the other was without any translation. There were two petitions signed by residents of Behar, one of which was accompanied by a translation, and the other was not so accompanied; but he believed that they were almost identical, so that the one translation would answer for both of them. Then there was one memorial from Tirhoot in English, and one from Monghyr, which apparently had no translation. The Behar and Tirhoot memorials were accompanied by translations, but the Monghyr one was not. These memorials were all, he believed, exactly to the same effect as those which had been presented to the Council. He believed they were framed under some misapprehension, as they expressly stated that the Bill would interfere with their religious institutions, when it was well known that the Bill distinctly provided that it was not to do so.

The HON'BLE MR. DAMPIER said he believed that the Government and the Council had already as fully before them the means of knowing what was the feeling regarding this Bill as they would have six months or twelve months hence, and therefore he did not think that any further delay would put them in a better position than that in which they now were.

The HON'BLE MR. HOGG said he somewhat dissented from the remark which had just been made, that the Council had before them all possible information they were likely to be possessed of after a postponement of six months. The Council were in somewhat an awkward position. When permission was asked to introduce this Bill, the hon'ble member on his left, who sat in the Council somewhat in the position of a representative of the Mahomedan community, supported the introduction of the Bill, and said that the Bill was one which would receive the approbation of the Mahomedans of Bengal, and so doubtless the Members of the Council (certainly MR. HOGG himself) were not prepared to offer any opposition to the Bill. This was particularly the case as regards himself, he not being acquainted with the feelings of the Mahomedans in Eastern Bengal, never having served in those districts. Now, when the Bill was in an advanced stage, we found the hon'ble member himself opposing the progress of the Bill, and saying that it was opposed to the views of the Mahomedan community generally, and particularly by those in Behar and Orissa. He could understand the Magistrates of the districts in Eastern Bengal coming forward and asking the Government in the Legislative Department to pass a Bill compelling the registration of marriages and divorces. But certainly, in the absence of the arguments upon which the request was based, he was unable to understand upon what grounds they thought a permissive Bill, if not supported by the Mahomedan population of Eastern Bengal, would have the effect they desired it to attain. The letters from the Magistrates of the districts in Eastern Bengal had not been placed before the Council; but perhaps the hon'ble member in charge of the Bill might favour the Council with information as to how a permissive Bill was likely to work the end desired by the Magistrate of Furreedpore and the other Eastern districts.

The Hon'ble Mr. Dampier said he really did not know that he could explain anything more than what had already been laid before the Council in the earlier stages of the Bill. Certainly for the purposes for which the Magistrates wanted the Bill, a compulsory Bill would have been more effective. That might be granted. But then came another consideration; and certainly the conclusion he came to was that the attempt to pass a compulsory Bill through the Council, and to get that Bill assented to in higher quarters, would be futile. The attempt was made some years ago. A Bill for compulsory registration was introduced by Syed Azumooddeen, but it was dropped at once because, as Mr. Dampier understood, there was such an outcry against it on the part of the Mahomedan community. The objection they felt to a compulsory Bill was that it would be an interference with their religion. He for one should disapprove of such a measure, because it would raise something more like a reasonable opposition from the Mahomedan community than the opposition which was now raised. The opposition which was now made seemed to him founded upon a misunderstanding of the scope of the Bill, and really did not apply to it. Still he would always rather give in to a prejudice, even though he himself considered it an unreasonable one, if he had no object in acting against it, than fly in the face of those who entertained it. It was believed that in Eastern Bengal, where the shoe pinched, the people would avail themselves of a permissive Bill, and a permissive Bill would go further towards attaining the object in view than no Bill at all.

The Hon'ble Mr. Rivers Thompson said he understood that the question before the Council was (on the motion of the hon'ble member opposite) that the Bill be postponed for six months for further consideration. He was quite prepared to oppose that motion and support the hon'ble member in charge of the Bill in wishing that the Bill should now be proceeded with. The Council were aware how in other places different methods were adopted to oppose a Bill by moving for its postponement on various grounds; but this was the very first time in his experience that opportunity was taken of opposing a Bill in this Council by the presentation of petitions and remonstrances at the eleventh hour, when the Bill was ready to pass; and such a course was especially unreasonable with reference to a Bill which had been before the public and the Council for nearly eighteen months. It was quite clear, if the Bill was to be postponed on such representations, that there was scarcely any Bill that could be passed. In large provinces like these it was very easy to get up petitions; it was very easy to put forward objections on the ground of religious interference, which was a very difficult argument to deal with in a Council constituted like this; but when these were brought forward almost on the day on which the Bill was to be passed, he did not think that there was justification for such a proceeding. And considering that the present Bill was purely permissive, and that it was needed for the benefit of the Mahomedan community in the Eastern Districts, he did not think that because the people of Behar objected to it and did not want to use it, the proposal for the postponement of the Bill was one which should be entertained.

It appeared to him that the opposition generally to the introduction of the Bill had arisen from parts of Behar. It was not certain—at any rate it was not clearly established—that that opposition prevailed throughout the province of Behar: but there might be parts of the Behar districts, and of some districts in Bengal, in which objections existed to the introduction of the measure. It seemed to him, therefore, that the form in which the section before the Council should be enacted would be improved by adopting the form which we had in another Act of the Council—in other Acts he might say—as regards the general manner of the introduction of the Act, as it left the power in the hands of the Executive Government as to when and where a particular Act should be applied;—not that the operation of the Act should be excluded from large provinces or particular divisions of the country till it had been extended thereto, but that it should be in the power of the Government, by a notification in the *Gazette*, to extend it to any districts, and sometimes more minutely to sub-divisions of districts. That, he thought, would be a better form in which to put the amendment proposed by the hon'ble mover of the Bill, and therefore he would move that the following words be introduced at the commencement of Section 1:—

"This Act shall commence and take effect in those districts in the provinces subject to the Lieutenant-Governor of Bengal to which the said Lieutenant-Governor shall extend it by an order published in the *Calcutta Gazette*; and thereupon this Act shall commence and take effect in the districts named in such order on the day which shall be in such order provided for the commencement thereof."

By this means it would be competent to the Lieutenant-Governor, if he found that the Act should be introduced in a district like Mozufferpore, to extend it to that district without introducing it in other parts of Behar, in the same way as the Act might be extended to a particular district or districts of Bengal without introducing it in the rest of the province; and a further advantage of the amendment he proposed was that it would leave the decision of the question to the Government, who, in a matter like this, were best able to ascertain by reference to their local officers the need for the introduction of the Act and the general feeling of the people in regard to it.

The question that the further consideration of the Bill be postponed for a period of from two to six months was put and negatived.

The Hon'ble Mr. Thompson's amendment was then agreed to.

The Council was adjourned to Saturday, the 3rd April.

Saturday, the 3rd April 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Dilir Jung, C.S.I.

CALCUTTA MUNICIPALITY.

The Hon'ble Mr. Hogg said, when he asked leave to introduce the Bill which had now been circulated to hon'ble members, he pointed out that the law which governed the Municipality of Calcutta was contained in a number of Acts, passed from the date of the passing of Act VI of 1863 down to the present time. Owing to the multiplicity of the Acts, and also from some of the provisions of the Acts not being altogether at one with each other, there was considerable difficulty, he stated, in ascertaining what the law was in many points. He therefore, on these grounds, suggested the expediency of consolidating the Municipal law of Calcutta; and at the same time he stated that although he had no intention of proposing any radical change in the law or constitution of the Municipality, yet he thought it would be advisable to avail themselves of this opportunity to amend the law in some respects in which it had been found not to work efficiently. The Bill now in the hands of the Council purported to consolidate ten Acts, commencing with Act VI of 1863 and ending with Act I of 1872, thus containing the whole Municipal law, with the exception of the Acts relating to markets. As the question of the management of markets was not immediately connected with the municipal administration of the affairs of the city, he thought perhaps it would be wise to leave the law upon that subject untouched. He had therefore not introduced in the Bill any provisions for the control of markets, until the Select Committee, to whom this Bill would be referred, considered whether it would not be advisable to leave the law in regard to the matter in its present state.

He now proposed to draw the attention of the Council to all the essential alterations which were proposed in the Bill which was now before the Council. By section 16 he proposed that the Justices should be empowered to make rules for pensions or gratuities to be granted and paid out of the municipal funds to their servants, and to repeal and alter such rules, subject to the control and approval of the local Government.

By section 25 he proposed that the number which constituted the quorum for a special general meeting of the Justices should be reduced from twenty-five to fifteen. The reason for this alteration was that the Justices often found it, especially in the hot weather, difficult to muster so large a number of Justices as twenty-five for the transaction of business, and consequently meetings had often to be adjourned.

Section 56 stated the rates which the Justices were empowered to impose upon the inhabitants of the town. The land-rate, that was the house-rate, had been left untouched; and as to the water-rate, he proposed that the maximum should be fixed at six, instead of five per cent. The reason for this alteration was that at present the Justices had it under consideration to extend the water-supply of the city. At present the maximum rate of five per cent. was levied from the owners of property in the town, the owner realizing three-fourths of the rate from the tenant of his property. The whole of this rate was now expended in meeting the current expenditure, including the interest and sinking fund for the repayment of the capital raised for these works. If, therefore, these works had to be extended—and he believed it was generally anticipated by all persons that a further supply of water would be required—it was absolutely necessary, now that these Municipal Acts were to be amended, that the Council should enable the Justices to impose additional taxation for the purpose of paying interest upon such additional capital as might be found necessary to increase the water-works.

The lighting-rate also was proposed to be raised from two to two and a half per cent. The grounds for this proposal were as follows. Act VI of 1863 proceeded upon the principle that all current expenses connected with the lighting of the town should be paid, not by the owners, but by the occupiers of property. Carrying out that principle, it was enacted that the cost of the lighting of the town should not exceed the gross proceeds of the lighting rate. But the Justices were permitted by the existing law to make a grant from the general fund for the purpose of maintaining lamps in an efficient state of repair. The rate of two per cent. was found not to be sufficient to cover the cost of lighting, and year by year there was an annual deficit of some Rs. 20,000. The Justices, to meet this, with the view of carrying out the letter, although somewhat in opposition to the spirit of the law, made a grant, year by year, from the general fund for the maintenance of the lamps, and that was carried to the credit of the lighting-rate, and thereby the deficit of Rs. 20,000 was made up. It followed, therefore, that that was paid, not, as intended by the Act, by the occupiers of property, but by the owners. He had therefore thought it better to provide that the maximum lighting-rate should be two and a half per cent: if that were not done, the Council would possibly think fit to modify the existing law, to enable the Justices to make grants from time to time from the general municipal fund to supplement the deficit from the lighting-rate. He would here note that the concluding clause of section 56 said that it should be in the option of the Justices, in lieu of any of the rates, to impose upon any land a fixed annual rate not exceeding four rupees for every cottah. That was a clerical error. The clause was intended to provide that it should be in the option of

the Justices, in lieu of the annual land-rate, &c. It was not intended that the Justices should have a discretion to impose a rate of four rupees per cottah in lieu of any other rate but the land or house-rate.

By section 73 he had enabled the Justices to impose an assessment upon the town for a maximum period of three years, or for any less period that they might think fit. He thought it wise to do that, as at present considerable inconvenience was felt by the Justices being compelled to rate all property for three years, no discretion being left to them as to declaring an assessment for any less period.

In section 100 considerable modifications were proposed in connection with the supply of water to the town. At present the law required the Justices for fifteen hours out of the twenty-four to provide a supply of water at a pressure sufficient to enable premises at a height of fifty feet to be freely supplied with water. For the remaining hours of the twenty-four, they were compelled to keep up a pressure of not less than ten feet. The Justices had always endeavoured to carry out the provisions of the Act, but under existing arrangements it was found to be practically impossible. The modification which he had proposed in the Bill was to compel the Justices from time to time, with the sanction of the Lieutenant-Governor, to declare at what hours water should be delivered at high pressure; and during the remaining hours of the day that the water should be supplied at a pressure of ten feet,—sufficient to supply the stand-posts. Of course it must be conceded that it would be a great convenience to the public generally that water should be supplied at high pressure throughout the day. However, he did not think that any practical inconvenience would be felt by the inhabitants of Calcutta if, during certain hours of the day only, water was delivered to the top of their houses at high pressure. They would know at what hours pressure would be put on, and they would then be able either to store the water in tanks or adopt any measures they thought fit to supply themselves with such a quantity of water as they would require for the remaining hours of the day. He had not proposed that the Justices should be compelled to supply any water to the stand-posts during the night. Practically, it was not requisite to do so, except for extinguishing fires. If the Justices were compelled to supply water to the stand-posts during the night, it would be found impossible to fill the reservoir from which the town was supplied during the day; and last year it became a question whether we should fill the reservoir or keep the stand-posts charged with water, as required by the Act. The Justices had adopted the former arrangement, and now did not, as a rule, keep the stand-posts charged with water at night. This was an infringement of the Act, but it was found practically impossible, without imposing great inconvenience upon the people, to give effect to the provisions of the existing law. As water was only required during the night for the purpose of extinguishing fires, the proposal he had made would not in any way cut off the supply for that purpose. The furnaces at the pumping-stations were always kept at work, and when a fire occurred, as there was telegraphic communication between the police-office and the pumping-stations, pressure could be put on before the fire-engines could arrive at the place where the fire had occurred.

The Hon'ble Mr Hogg.

There was another important modification of the law which he proposed in section 114, in connection with the police budget. At present the Justices, by Act XI of 1867, were compelled to pay the cost of the police, minus such contribution as the Government might from time to time think fit to grant. Under the existing law the budget must be submitted by the Commissioner of Police to the Justices, and the Justices had the power to modify and amend it in any way they thought proper. That, however, was entirely opposed to the provisions of the Police Act; and the late Advocate-General, Mr. Cowie, was distinctly of opinion that the provisions of Act XI of 1867, in so far as they gave the Justices control over the expenditure of the police, were simply a dead letter, and could not be enforced. The late Lieutenant-Governor, Sir George Campbell, was of opinion that when the Municipal Acts were amended, the opportunity should be taken to correct the discrepancies between the Police Act IV of 1866, and Act XI of 1867. He thought it would be conceded by hon'ble members that it would not be expedient to allow the Justices to decide the strength of the police to be maintained for the metropolis of India. That surely was a question to be left entirely to the local Government. By all means let the budget be submitted to the Justices: let them criticise it and make such remarks as they might think proper, and those remarks should be submitted to the local Government; and it should rest with the local Government either to accept the suggestions of the Justices or pass the budget as prepared by the Commissioner of Police; and he thought, after the budget had been passed by the local Government, it should be compulsory upon the Justices to provide for the cost of the police as sanctioned by the local Government. With the view of giving effect to that procedure, Act XI of 1867 had been repealed, and the sections in Chapter VIII of the Bill had been introduced.

There were no other material alterations of the law which called for any remarks, and he therefore begged to move that the Bill to consolidate and amend the law relating to the Municipal affairs of Calcutta be read in Council.

The HON'BLE MR. SCHALCH said, the hon'ble mover of the Bill had so clearly stated the necessity for consolidating the various Acts which were in force in the Municipality of Calcutta, that it was unnecessary any further to dilate upon that subject. He would merely mention that he thought any person who had to wade through those numerous Acts, and compare those Acts one with another, would acknowledge the necessity for consolidation. He thought they might congratulate themselves that the work had been undertaken by a gentleman of such experience, as their hon'ble colleague had experience in the office of Chairman of the Justices for several years. The Bill, as had been observed, had been chiefly confined to the consolidation of the present law, and he thought that in following that course the hon'ble mover had acted very wisely. He had left it open to the Select Committee to introduce any amendments or alterations that might come before them, and that might be found necessary. There were, however, one or two matters referred to in the Bill to which MR. SCHALCH would request the attention of the Council.

The first of these was as to the necessity of increasing the lighting-rate. Many portions of the town were still lit in a primitive mode by oil lamps, and the residents of these portions desired to have gas introduced; but unless the lighting-rate was increased, there would be no prospect of that object being met.

The alterations proposed in the water-rate were somewhat more important, and he would take this opportunity of observing that when he held the appointment which the hon'ble mover of the Bill had now been holding for some years, it fell to his lot to press upon the Justices the adoption of the present scheme of water-supply. The Native Justices, not having had experience of such a system, and looking to the enormous expense of nearly half a million, which the introduction of such supply would entail, very naturally were opposed to the measure. Well, he must say that they fought the question fairly and openly, and when conquered they at once accepted the measure and showed no factious opposition to its introduction. At first it was feared that the native feeling, arising from religious sentiment, against the use of the water was so strong, that not much benefit would be derived from it. However, the question was submitted to the opinion of learned gentlemen of their own religion, and their decision was that there really existed no religious objection to the use of the water. And he believed that now in the native portion of the town water had been very freely introduced in their houses, and even the most orthodox did not object to its use. The consequence had been that the demand for water was much greater than was expected; and although the supply now was seven and a half millions of gallons per day, which was rather in excess of the six millions which the water-works were originally intended to supply, yet that quantity was found insufficient, not only for the purposes of the town itself, but to meet the wishes of the inhabitants of the suburbs of the town, who were most desirous, for a fair consideration, to enjoy the inestimable benefit which would be afforded them of a pure and wholesome supply of water. Besides which, there was no doubt that under the present supply system the waste of water was enormous. The consequence would be either that the waste must be largely reduced, or the works must be largely extended, or a union of the two measures must be adopted. The proposal, therefore, of raising the rate by one per cent. was a very moderate one. But it would be observed that the provisions of the section which his hon'ble friend had mentioned (section 100, he thought,) were very different indeed from those of the present law. Under the present law the Justices were bound to supply, during the day, water under a pressure of fifty feet, and during the night under a pressure of ten feet. Under the proposal now made, the pressure, and the time during which it was to be kept on, would be dependent upon the pleasure of the Justices under the sanction of the Lieutenant-Governor. The practical effect of this would be that instead of a constant supply under high pressure, we would have an intermittent supply placed under no restriction but the will of the Justices under the sanction of the Lieutenant-Governor. A severe conflict was now raging in England between the advocates of the two systems. The advocates of the intermittent system appealed to the great waste of water which was said to occur under the

constant supply system, and urged that the advantages afforded by a constant supply system were more than counterbalanced by the waste and the cost attending it as compared to the intermittent system. Amongst some interesting papers which he had read, which were brought before the British Association at Belfast, was a report relating to the water-supply of the town of Liverpool, where the high pressure system was introduced. It was alleged that the waste of water was not greater than it would be under the intermittent system. He trusted, therefore, that the Select Committee, before determining that the constant supply system, with all its great advantages, should be set aside for the intermittent system, would carefully consider the subject, and see if it was possible, under proper arrangements, to prevent the wastage to continue; and if it should be unfortunately found that the expense attending the constant supply system be too great, they should take care that sufficient conditions were imposed upon the Justices to afford a proper supply, and that it should not be left so entirely to their will as would be under the section as it was at present drawn.

There was another question in regard to the water-supply which he would bring to the notice of the Council. The same rate on the house assessment was enforced in the cases of houses which received their supply through manual labour from the street hydrants, and in houses where the water was laid on; and it applied equally to houses fully occupied, and where the consumption of water was considerable, and to houses maintained as shops or offices, where the demand for water was very much less. It seemed to him that the great source of waste was in the houses in which water was laid on. The owner or occupier of the house had to pay the same rate, whatever might be the amount of water he used. It was therefore a matter of very little concern to him personally what the waste of water was, and he was therefore careless whether or not the taps turned were needlessly turned, and what quantity of water was wasted. If, however, he had to pay for any quantity taken in excess of a certain quantity, the principle of self-interest would be brought into play, and he would exercise greater care. MR. SCHALCH thought it should be a matter for consideration whether some arrangement could not be made by which a house supply could be tested; and if any quantity in excess of that carried by the rate paid were used, an excess rate might be charged. Of course such an arrangement would necessitate the use of water-metres, and it was, he believed, not a very certain matter that good and effective water-metres could be introduced, and the cost of the metre and of its repair might be very great. The use of metres was enforced by the Gas Company, and he did not think that a proposition to allow gas to be used except through a metre would be permitted. He was quite sure that any cost that would be incurred would be much more than recovered by the amount of wastage which would be saved, and by the additional charge which might then be imposed for water used in excess

There was another subject to which he wished to draw attention, and that was the question of assessments. In the statement of objects and reasons it was declared—

"The Bill does not propose to deal with the question of allowing an appeal from assessments made by the Justices Such a proposal must necessarily raise questions as to

the tribunal to which the appeals should be made, and the form of procedure that should be provided for regulating the conduct of such appeals It is thought better, therefore, to leave the determination of this question for the consideration of a Select Committee"

Presuming that the subject would receive the consideration of the Select Committee, he would beg to offer a few remarks for their consideration. The Port Commissioners, a body with which he had the honor to be connected, lately had their premises brought under assessment. The assessment was fixed by the Town Assessor at Rs. 2,25,000. This the Port Commissioners thought excessive, and an appeal was preferred to the Justices, who reduced the assessment to Rs. 2,03,880. The practical difficulty attending the assessment arose from the circumstance that the premises were not rented, but occupied by the Commissioners themselves, and therefore the Justices had to determine the proper rent. The practical result was that the rent on which the assessment was calculated actually resulted in twelve per cent. of the cost of the construction of the buildings. Some of the hon'ble gentlemen in that Council were owners of house property, and he thought they would be very glad to get a clear eight per cent. upon the cost of a building, and that twelve per cent. was a very large and unnecessarily severe assessment. He would not attempt to go into the merits of the Port Commissioners' case: he merely stated the fact that the assessment resulted in giving a rental of twelve per cent. upon the cost of construction. Not being satisfied with that result, the Port Commissioners were desirous of taking the matter afresh before some independent tribunal, but on consulting the Advocate-General they found that there was no tribunal before which they could bring the matter in appeal, and that the decision of the Justices was final. Since that appeal was preferred, there had been considerable vexation and dissatisfaction created in the town by the way in which the assessment had been carried out. The matter was lately brought before the Justices in meeting, and the Justices resolved that, with a view to prevent assessments being carried to an excessive amount, the Bench or Court of Appeal which was to hear such assessments should be composed of Justices other than the executive officers of the Municipality. With every intention of keeping the assessments within a fair rental by an appeal to a Board so constituted, he did not think it would be satisfactory to the rate-payers to find their appeals decided by the Justices themselves, who would be considered to be judges in their own cases. It would be much more satisfactory if the reference was made to an independent tribunal, as under the Bombay Act. He found that under the Bombay Act assessments were conducted by the Municipal Commissioner, an official who was, in some respects, in the same position as the Chairman of the Justices here, exercising full authority in all executive matters, but an appeal could be preferred to the Court of Petty Sessions. Now in Calcutta they were not blessed with a Court of Petty Sessions, but they had a Small Cause Court and a High Court, and he saw no reason why appeals should not lie from assessments of the Justices to the Small Cause Court or the High Court, according to the value of the property involved. As to the question of procedure, he did not think any difficulty would be found in applying the procedure now in force in either of those Courts in suits which were brought

before them, or in altering it so as to meet the case of an appeal from the assessments of the Justices; and he was quite sure that such an appeal would be satisfactory not only to the rate-payer, but would also relieve the Justices from a very disagreeable task.

Before quitting this subject, he would remark upon the principle which had been laid down in the existing law for assessments. As a principle, the assessment was to be made upon the annual value of houses and premises. The annual value was, under Act VI of 1863, taken to be the estimated gross annual rent at which the houses, buildings, and lands, liable to the rate, might be let, or might reasonably be expected to let, from year to year. In the case of land or property held on a lease, the lease, as a general rule, was accepted as setting forth the fair annual rent of the premises; and unless it could be shown that there were special circumstances which would render that testimony invalid, the assessment was made upon the rent specified in the lease. In the case of newly constructed houses not upon lease, and in the very numerous cases of houses occupied by their owners and not leased, it was a very difficult matter indeed to ascertain what the annual value was. In many parts of the town there were streets occupied entirely by owners, and it was very difficult to get a house let on lease with which to compare, which would show the fair annual value. He would therefore throw out, for the consideration of the Select Committee, whether it would not be desirable to give an option to the Justices, in such cases where the houses were not let, and it could not be easily ascertained what the annual letting-value might be, to permit them to assess the value at a rate which should bear a certain proportion, say from five to eight per cent., of the cost of the construction of the house and the value of the land upon which the house was constructed. Such a provision would, he thought, be equally equitable to the rate-payers and to the Justices. It would be acceptable to the rate-payers because it would fix a limit beyond which their property could not be assessed, and it would be acceptable to the Justices because it would enable them to have the means of ascertaining the maximum rate at which they could assess, in many cases in which the assessment was very difficult.

The hon'ble mover of the Bill had observed that it would be open to the Select Committee to import any improvements or amendments which they thought advisable into the Bill, although they had not now been imported into it, and amongst these he mentioned one which was rather important, namely the constitution of the Municipal body. MR. SCHALCH would be the very last person to say that the town had not been immensely benefited by the administration of the Justices within the last twelve years—since they were appointed. No one could look round and see the vast improvements in the repair of streets, in conservancy, and, above all in the water-works, without acknowledging that these works had resulted in great advantage to the town. At the same time, there was little doubt that there were certain defects connected with the constitution of the Municipality which were felt, and which it would be advisable to take the present opportunity to remedy. Without going into much detail, he might

say he thought these defects seemed chiefly to lie in the number and clumsiness of the present machinery, and somewhat in the want of definition and distinctness between the powers of the Municipality and the powers of the executive. No doubt the present Corporation was a large body: he believed that there were carried on the list of the Corporation, even since the exclusion of the Justices of Bengal, Behar, and Orissa, some hundred and twenty members. It was not very easy to get together such a large number of Justices, and there were many small details which came before them which, he thought, would be better disposed of by a more compact body; and the result of their frequent meetings was that a great deal of time was spent which could not be spared by many members of the Corporation who would otherwise be happy to attend and be of great help to the Municipality. The merchants were a class of people who could afford great help, but could not spare much of their time. Defects somewhat like these had been felt in Bombay, and led to the enactment of the municipal law which prevailed there now. He would briefly state the main provisions of the Bombay Act. The Corporation consisted of sixty-four members; sixteen, or one-fourth of them, were appointed by the Government; another fourth were appointed by the body of the Justices,—a body which might be of an unlimited number, and were altogether distinct from the Municipality, and had no connection with it further than to appoint their quota of the members. The other thirty-two members were elected by the rate-payers on certain conditions as to qualification. A payment of fifty rupees annually in taxes formed the qualification for voting, and payment of one hundred rupees qualified for election as a member. From these sixty-four members there were then appointed what was called the Town Council, which consisted of twelve members, eight of whom were appointed by the Municipality and four by the Government; the Government having the right to nominate the Chairman of the Town Council. Besides the Chairman of the Town Council, there was a Chairman of the Corporation, whose sole duty was to preside at meetings of the Corporation. The object of the creation of the Town Council was for the due administration of the municipal fund. In addition to this Corporation and the Town Council, there was an officer, unknown to us in Calcutta, called the Municipal Commissioner. In his hands lay the whole executive duties of the Municipality, or, as was described in the Act, in him vested the "entire executive power and responsibility" for the purposes of the Act. The Municipal Commissioner was prohibited from sitting as a member of the Town Council. Of the Corporation itself there were only four quarterly meetings, but there was power reserved to the Chairman to call a special meeting. Practically the functions of the Corporation were confined to laying down rates to be imposed, and to voting the annual budget; while the Town Council saw that the money was properly expended, and that the executive work was done by the Municipal Commissioner. The constitution of a Municipality somewhat upon that principle seemed to MR. SCHALCH a good idea: the only thing was that it should be a matter for grave consideration whether the principle of election should be admitted in Calcutta. If it were not admitted here, then no portion of the Corporation would be elected, and in that

case the present Corporation might be continued. They were selected with a good deal of care and discrimination, and they would form the Town Corporation; but subordinate to them he would suggest the appointment of a Town Council of twelve members. The Town Council might be composed of five members appointed by the Corporation to represent the five divisions of the town; four members might be nominated by what might be called the representative bodies in Calcutta,—the Chamber of Commerce, the British Indian Association, the Trades' Association, and any other body which might be supposed to represent any particular class, such as the Literary Society of the Mahomedans; and the remaining three members might be appointed by the Government to represent their interests, and one of these should be the Chairman of the Corporation, who would also be the Chairman of the Town Council. He would not have a Municipal Commissioner, as at Bombay, to transact the executive duties irrespective of the Town Council, but would combine those executive duties with the proper supervision of the Municipal Fund, and place both duties in the hands of the Town Council. The Chairman, who at present found that the whole duty of initiation devolved upon him, and that he did not very often meet with the support he would desire to meet with from so large a body as the present Corporation, would have very little difficulty in obtaining, in all expedient matters, the support of the Town Council, who would, in fact, take a co-ordinate part in all these executive duties. He thought a scheme of that kind would meet many of the objections now made against the present Corporation. He had himself had the advantage of being for some years the head of the Municipality, and since that period he had been connected with another body, the Port Commissioners, whose duties were carried on very much on the principle of a Town Council. There we had a small body who, in conjunction with the Chairman, conducted the duties of the Corporation. But if it should be thought that a Town Council alone would be too limited a body, and not sufficiently representative of the town, to be entrusted with the entire administration of the Municipality, then if a Town Council were combined with the Corporation, somewhat in the manner he had sketched out, and the duties of the Corporation confined to the settling of the rates on the budget, leaving the minor details to the Town Council, the system would, he thought, be carried on in a much more satisfactory manner. Any expenditure not provided for by the budget would have, of course, to be brought before the Corporation, and a special grant, as in Bombay, would be required to be given for the purpose.

He had thrown out these remarks not for present discussion, but with a view to their consideration in Select Committee.

The Hon'ble Baboo Kristodas Pal said a *quondam* Governor-General of India, alike distinguished for ability and eloquence, once remarked that the Legislative Council of India was a standing committee of changes If proof was wanted to illustrate the truth of that saying, the history of municipal legislation of Calcutta afforded a notable proof. The first law which gave the present constitution to the Calcutta Municipality was passed in 1863, and within the last twelve years about twelve Acts, including those for markets, had

been enacted, giving on an average one Municipal Act for the town per annum. Thus there were changes almost annually going on in the municipal law of Calcutta. The time had arrived for the consolidation of those laws, and the task could not have been undertaken by a worthier individual than his hon'ble friend in charge of the Bill. He had had experience of the working of the Municipality for the last nine years, and his energy and ability had always extorted the admiration of the community and the Government, though there had been occasional differences of opinion between the Justices and himself regarding his method of action. The present Bill aimed at the consolidation of ten Acts, excluding the Market Acts. The hon'ble mover had said that the question of the incorporation of the Market Acts might be considered in the Select Committee, who might, if they should think proper, include them in the Bill. For his own part, BABOO KRISTODAS PAL thought that the law relating to the Municipality of Calcutta should be one, and that the Market Acts should not be left separate: but the Select Committee would doubtless consider that important point.

The hon'ble mover of the Bill had explained that he had not touched the constitution of the Corporation; but the hon'ble member to his right (Mr. Schalch) had suggested that the present opportunity should be taken to improve the constitution, if practicable. The hon'ble gentleman was the first to inaugurate the present municipal system of Calcutta, and he had considerable experience in the working of it. He was now the head of another Corporation, which, though limited in its scope, had still very important and somewhat analogous functions to perform; and occupying the vantage ground he did as the head of that Corporation, he saw the defects that disfigured the neighbouring institution. He had therefore propounded a scheme for the reform of the municipal constitution of Calcutta. Whatever fell from the hon'ble gentleman on a subject like this was entitled to the attentive consideration of this Council, and BABOO KRISTODAS PAL readily admitted that the suggestions his hon'ble friend had made were very important and worthy of serious consideration. This was not the place to review the history of the Municipal Corporation created by Sir Cecil Beadon's Act of 1863, but one thing he might remark, that whatever the errors and shortcomings of that body, it had done its duty courageously, honestly, and on the whole satisfactorily. With two such hon'ble gentlemen, who were now members of this Council, as Chairmen of the Corporation, and with a body of citizens as members of that fraternity, who were noted for intelligence, practical knowledge, and public spirit, it could not but be otherwise. The object of both was the good of the town, and barring occasional differences of opinion, the Justices and their Chairman had co-operated heartily in furthering the common object. He would not enumerate the many improvements which the Justices had introduced: any one who had seen Calcutta twelve years ago, and who saw it to-day, could at once point to the improvements in question. But at the same time he must admit that those improvements had been effected at an enormous cost. The taxation of Calcutta had increased from nine and a half to twenty per cent., and in addition to the revenue derived from such taxation

the Justices had incurred a very large debt for the construction of works of permanent utility. The establishment had also enormously increased, and indeed there was a general impression that a considerable part of the municipal income was unnecessarily eaten up by the establishment. He believed the hon'ble member in charge of the Bill himself admitted that, if he had the power under the Act, he could considerably reduce the establishment, and combine economy with efficiency. BABOO KRISTODAS PAL hoped that the present Bill would give the Chairman the power to carry out his views in that respect.

Now with regard to the constitution of the Municipality, the hon'ble member who last spoke said that the present machinery was unwieldy. There could, BABOO KRISTODAS PAL thought, be no difference of opinion that it was an unwieldy body; that every member of the Corporation did not devote that attention to municipal affairs which it was his duty to do; and that on many occasions things were carried by the votes of the majority, perhaps not intelligently given. This was more or less the case with large representative bodies everywhere: it was the few who worked, and the many who enjoyed the dignity of office. It was the few working members of Parliament who had made it what it was, and not the six hundred and odd who composed the House of Commons. And the working Justices, the hon'ble mover could testify, spared no labour and trouble to discharge their duties conscientiously and efficiently. If the present constitution was to be changed, he hoped it would not be a half measure. The scheme which the hon'ble member who last spoke had propounded, he was sorry to say, had the character of a half measure. It was borrowed from the Bombay Municipal Act, and hon'ble members were doubtless aware of the violent opposition that Act met with from the citizens of Bombay whilst it was passing through the local Council. Europeans and natives banded themselves together to oppose the passing of the Bill, and they came up to the Viceroy praying that he would put his veto upon it. His Excellency allowed the Bill to pass, upon the ground that it was a merely tentative measure, and BABOO KRISTODAS PAL hoped that a Bill passed under such doubtful auspices would not be made a model for the municipal constitution of Calcutta. If a move was to be made for the amendment of the municipal constitution of Calcutta, he hoped that the right of election on a broad basis would be conceded. He was not prepared to say that the Council was in a position, or that the time had arrived, to concede a thorough elective system to the town of Calcutta; but he must observe that no mere tinkering of the municipal constitution would satisfy the public. If it was thought advisable to give the citizens of Calcutta the right of self-government, they ought to have it fully and unreservedly. But then the question would arise—suppose the elective system be conceded, should the Chairman be elected by the representatives of the town, or should his appointment rest with the Government? Now there could be no thorough elective system unless the Chairman's appointment were also made elective; and with the question of the appointment of the Chairman arose many important questions which it was not desirable to discuss there. He was of opinion that for a long time to

come it would not be desirable to separate the appointment of the Chairman of the Justices from the Civil Service. He had seen the working of the Calcutta Municipality for the last twelve years, and he must confess that, though the proceedings of the Chairman might have been sometimes characterized by an arbitrary spirit, he had proved an honest administrator of public funds and public affairs. There could not be a more trustworthy agent than a member of the Civil Service. If, then, the Council were not prepared to leave the election of the Chairman in the hands of the Town Council, would it be worth its while to constitute a Corporation composed partly of members nominated by the existing Corporation, partly of delegates from the public Associations of Calcutta, and partly of members appointed by the Government? Now with regard to the Associations of Calcutta, although he had the honour to belong to one of them, he must admit that they were not permanent bodies, and that it was therefore open to question as to whether the permanent interests of the town should be committed to bodies who lived on the breath of their subscribers. In the next place the hon'ble member proposed that the Town Council should be formed on the model of the Port Commission, and that its proceedings should be conducted in the manner of those of the Port Commissioners. Now, with every deference to the Port Commissioners, BABOO KRISTODAS PAL hoped the Council would not pass any measure which would reduce the Town Corporation to the level of the Port Commission. The Port Commissioners, as the representatives of the mercantile interest, were doubtless doing their work well and satisfactorily; but their close borough system, it appeared to him, was not suited to the public interests of Calcutta. The proceedings of the Port Commission were not open to the public; the representatives of the press were not admitted to its sittings. An attempt, he believed, was once made for the admission of reporters to the sittings of the Commission, but the application was refused. No one outside the pale of the Port Commission knew what they did, beyond what they might vouchsafe to state in their annual report. There was, therefore, no check whatever over the proceedings of the Port Commission. On the other hand, the Justices acted in the full blaze of publicity. They did not conceal any thing from the public view; on the contrary they courted criticism, and the public were therefore always in a position to know the history of every question discussed by the Justices, and the measures adopted with regard to it. The policy of publicity, introduced by the Municipal Act, had infused a new public spirit into the citizens of Calcutta, and he could assure the Council that the rate-payers of the town now took a far greater interest in its affairs than they had ever before done. They now read every paper published by the Municipality, they discussed every question, and were ready to give their opinion upon important matters which affected their interests; and he hoped the Council would not take a retrograde step and put an end to that which was one of the redeeming features in the present system of municipal administration of Calcutta.

As for having a small compact body to manage the executive business of the town, he might say that that was now practically done. There were already

standing committees to aid and advise the Chairman in the terms of the law, and although there were two general committees, they practically met together and thus constituted one committee. These committees met on an average once a week, and thus performed the functions of the Town Council which the hon'ble member who last spoke proposed to establish. Of course these committees had not the prestige or the authority of the proposed Town Council, but they did all the executive work placed before them by the Chairman; and as the Chairman had made it a rule not to come before the Corporation with any proposal without, in the first instance, laying it before the committee, there was little friction between him and the Justices. He came before the Justices armed with the recommendations of the committees, and he generally received their support.

In making these remarks, BABOO KRISTODAS PAL wished it to be understood that he did not mean to say that the constitution of the Municipality was not susceptible of improvement. But he hoped that whatever changes it might be thought proper to make, would be made in the right direction, —that was to say, in the direction of greater freedom and greater power to the rate-payers and their representatives than was given under the Bombay Municipal Act. That Act was now under trial, and he did not think it would be wise to follow it here.

With regard to the Bill itself, he begged to offer a few remarks. First with regard to the constitution of the Corporation as defined in Chapter II. Section 4 of that Chapter said—

"All Justices of the Peace for the Town of Calcutta, and such other Justices for Bengal, Behar, and Orissa, resident in Calcutta, as the local Government may from time to time, by order published in the *Calcutta Gazette*, appoint in that behalf, shall, by the name of the Justices of the Peace for the Town of Calcutta, be a body corporate."

It was evidently implied by this section that Justices for Bengal, Behar, and Orissa might be appointed members of the Corporation. He would not trouble the Council with the history of Act VI of 1871, withdrawing the Bengal, Behar, and Orissa Justices from the Town Corporation, which was passed during the incumbency of Sir William Grey. He was ready to admit that the Bengal, Behar, and Orissa Justices would prove a very useful element in the Corporation, if they could be made to take due interest in the business of the town. They were a highly educated body of gentlemen, and from their position they were greatly experienced in public affairs; but unfortunately, as the history of the Corporation showed, they took very little interest in the legitimate business of the Corporation, except where personal questions arose. Their conduct in this way became a public scandal; representations were made to the Government of the day for the amendment of the constitution of the Municipality in that respect; and Sir William Grey, concurring in the views of the memorialists, sanctioned the passing of that law. BABOO KRISTODAS PAL did not think that it was intended that the old law should be revived; but the words would seem to imply that the Bengal, Behar, and Orissa Justices might be appointed to the Corporation as of old. He admitted that there would be no reasonable objection if the Lieutenant-Governor were to appoint such gentlemen

Justices of the Peace for Calcutta independently of their position as Bengal, Behar, and Orissa Justices. There were already several Civilian gentlemen members of the Corporation, but they had been nominated independently of their position as Bengal Justices. But he thought the law should not re-enact that the Bengal Justices should, by virtue of their position, be appointed Justices of the Peace for the town. It might be left to the discretion of the Government to appoint them.

Then, with regard to the Municipal fund. Section 6 declared that the municipal fund might be applied for the purposes of this Act and "for such other purposes as the Justices, with the sanction of the local Government, may direct." This, he submitted, was a direct and, he was obliged to say, a dangerous innovation. If the committee of the Town Band or the promoters of the Zoological Gardens, or any other body or individuals who had some fancy project to serve, went to this milch cow for funds, the Justices in their wisdom might give the grant. But the interests of the rate-payers would be sacrificed, and there would be nothing in the law to prevent such a gross misapplication of the municipal fund. This power, he thought, should not be given, and the objects for which the fund should be expended should be distinctly defined in the law.

He had remarked at the outset that the existing law did not give sufficient power to the Justices to enforce economy in their establishments. Under the present law it was obligatory on the Justices to appoint the following officers, viz., vice-chairman, secretary, engineer, surveyor, health officer, collector of taxes, and assessor. Now the appointment of health officer had often been a subject of discussion in the Municipal Corporation, and on every occasion when the question was raised it produced some irritation. It was felt that the law had unreasonably tied the hands of the Justices, and that they could not appoint an officer on condition that he should give a part only of his time to the work of the office, which would be quite sufficient for the purpose, and devote the rest of his time to whatever occupation he might think best. Baboo Kristodas Pal thought that power should be given to the Justices to make some such arrangement, if they deemed it necessary, with the health officer with regard to the employment of his time. None knew better than the hon'ble mover of the Bill that the work of the health officer was not such as to occupy the whole of his time, and the Justices could save a large sum of money annually if they could effect such an arrangement as the one they did while Dr. Macrae held the office of health officer. With the same object Baboo Kristodas Pal would wish that power should be given to the Justices to double up some of the appointments at any time they might think fit. The Justices might some time obtain the services of an officer who, as health officer, or engineer, might also conduct the duties of vice-chairman, in the same way as the Vice-Chairman of the Port Commissioners performed the duties of engineer-in-chief to that body. Although such an arrangement was not practicable now, it might be practicable at some future time, and he thought the law should give power to the Justices to double up any appointments in their discretion.

He now came to the question of taxation. He observed that the Bill proposed an increase of the lighting rate from two to two and a half per cent., and of the

water-rate from five to six per cent. The hon'ble mover of the Bill had explained his reasons why he asked for an increase of the lighting-rate. BABOO KRISTODAS PAL admitted that the Corporation had to make annual grants of from Rs. 16,000 to Rs. 20,000 to make up the deficit in the lighting-rate fund. He did not believe that the law did not empower the Justices to make such grants, though he was aware that doubts were entertained on that point. At the same time he was not quite sure whether a redistribution of the lamps would not effect a saving which might secure efficiency in illumination, and dispense with the necessity of increasing the lighting-rate. That question had sometimes been urged upon the Justices, but had not been practically carried out. He did not see why this should not be done, particularly when it involved the question of an additional half per cent. rate. It was also observable that the Justices seemed to be powerless in enforcing their contract with the Gas Company with regard to the illuminating power of gas, and that also occasioned a deficiency in the lighting fund. If they could enforce the illuminating power contracted for, the lamps could be posted at greater intervals than at present, and thus a saving could be effected. At any rate, he thought that the present grant of from Rs. 16,000 to Rs. 20,000 from the general funds was not grudged by the Justices, and he hoped that the hon'ble mover of the Bill would drop this additional half per cent.

With regard to water-rate, he readily admitted that the present supply was insufficient, and that if it was to be extended, more money must be had. The water-supply had undoubtedly proved a great blessing to the town, for which the rate-payers were greatly indebted to their first Chairman (Mr. Schalch); and he believed that if there was any act of the Municipality which had the unalloyed gratitude of the rate-payers more than another, it was the adoption of the water-supply system. But the benefit of the water-supply had not been extended to the poorer parts of the town. No less than fourteen miles of bye-lanes still remained to be piped, and the reason given was that there were no funds. He believed that the object of the proposed extension of the water-supply was to lay down pipes in those bye-lanes where the poorer classes chiefly dwelt. In considering the question of imposing an additional water-rate, he submitted that it was worth the consideration of the Council and the Select Committee whether such a scheme could not be devised as would, as far as practicable, relieve the poor of the burden which now existed, and make the rich contribute in proportion to their own demand for, and consumption of water. At present the water-rate was founded upon a most inequitable system. It would be remembered that the high pressure system had been introduced chiefly for the benefit of the rich who dwelt in two and three-storied houses. But, as had been pointed out by his hon'ble friend, the rich and the poor were made to pay alike. The rich man who lived in a palace and wanted water in the third floor of his house, and the poor man who lived in a hut, but who had not been able to lay on water because the water pipes did not run through the bye-lane in which he dwelt, were made to pay equally the five per cent rate. That, BABOO KRISTODAS PAL submitted, was neither fair nor just. When the Act of 1863 was passed, the water-rate was based on a just and equitable

principle. It was this, that a general rate of two per cent. should be levied for water supplied at a height of three feet, and that a graduated scale should be followed for taxing persons taking water at a greater height than three feet. Now, he did not know whether the scheme which had been sketched out by the hon'ble member who spoke last would be practicable, because it would lead to complicated calculations; whereas the principle laid down by the Municipal Act of 1863 was easy and quite practicable. If, for instance, a general rate of four per cent., to cover the present working charges of the water supply, were levied from all persons who received a supply, say at a height of five feet, whether they laid on water or not in their houses, and an additional percentage, graduated according to distance, say of one per cent. for water supplied at a greater height than 5, 10, or 15 feet, respectively, then the collections from this graduated impost or rate would, BABOO KRISTODAS PAL believed, cover more than was expected to be derived from the additional one per cent. rate. The effect of such an equitable adjustment of the water-rate would be the relief of the poor and the proper taxation of the rich.

He threw out these suggestions for the consideration of the Select Committee. The plan of the hon'ble gentleman who spoke last was to measure the water by metre, but BABOO KRISTODAS PAL was not quite sure whether that system would work satisfactorily. Then, with regard to this question of water-supply, he observed that the word "pumps" had been introduced in section 91, he did not know with what object, because stand-posts and *not* pumps were now used. If the object was to prevent wastage, he thought a self-closing stand-post would practically answer that purpose, whereas pumps would cause great trouble and inconvenience to the public.

He would now draw attention to section 188, which involved the question of bustee improvement. The Council were aware that that question now occupied a considerable share of the attention of the Justices, and he believed that some sections of this Bill were intended to cover the recommendations of the Special Committee of the Justices on the subject. Section 188 declared that huts might be removed from any bustee without the payment of compensation. But the present law provided that compensation should be given to the owners of huts for compulsory removal of the same. The provision in the Bill, he thought, would be unfair to the poor tenants.

The procedure for carrying out this provision would be somewhat in this wise. The Justices would require the landlord to remove the hut, he (the landlord) would be compelled to call upon the tenant to remove it, and the tenant would have to bear the loss. BABOO KRISTODAS PAL did not think that it would be fair to burden the tenant with this loss. If the removal of a hut was intended as a sanitary measure for the benefit of the public, justice required that the public funds should bear the cost. Then the same section provided that it would be lawful for the Justices to call upon the landlord to "execute such operations" as they might think fit for the improvement of a bustee, in default of which the Justices would carry out the said operations at the expense of the landlord. Now the power thus given to the Justices was very wide and indefinite. The law ought to specify the operations which it would be lawful for the Justices

to compel the landlord to execute. On reference to some of the reports of the officers of the Municipality on bustee improvements, he observed that one officer had actually recommended that a rivetting wall should be attached to a tank, and another that a ghât should be constructed for washing and bathing in the tank, as sanitary measures intended for the conservation of the health of the locality. It was impossible to say what works might not be demanded from the landlord in the name of sanitary improvement by over-zealous officers, if the law were left so uncertain and indefinite.

Section 196 sanctioned the imposition of what was called in Bombay the *Halalcore* cess. Of course this was a very important work to be done by the Justices, but he thought the cess should be so regulated as not to take the form of a new tax. The residents of the town already bore the expenses of cleansing their necessaries, and if the cost the Justices might levy should not exceed the charges already incurred by them, there would be no objection to the proposed cess. He thought the maximum rate of the cess should be defined in this Bill.

Section 197 required owners to provide privies for their tenants. None knew better than the hon'ble mover of the Bill that the practice in this town was for occupiers to provide latrines for themselves, and that as the women did not generally go to a public latrine, every occupier who had a family had, as a rule, his own private latrine, and he had it built at his own expense. But as this section was worded, it would be incumbent upon the owners of land to provide latrines for each occupier, and the Council could well conceive the cost which would be thus thrown upon the owner for this object. The Engineer to the Justices himself said that public latrines would not be resorted to by the poor inhabitants of bustees. He wrote:—

"There can be no doubt that the wisest plan would be to abolish privies in bustees entirely, and in their place to erect latrines which should be resorted to by all of both sexes. But is this practicable? and would the European poor, who are not imbued with the caste and other prejudices of the native, take readily to such a scheme?"

Such being the feeling of the people, the landlord under the proposed section must provide a latrine for the use and accommodation of every occupier, and the cost which would be imposed upon him would necessarily be enormous. BABOO KISTODAS PAL did not say that latrines should not be constructed; but where the occupier was unable to construct a latrine, the Justices should construct it and charge a fee. And as hon'ble members were aware these latrines were a source of profit, the Justices would not suffer any loss by such measure. But as a rule the occupier should be made to construct his own privy.

He had only a few more suggestions to offer for the consideration of the Select Committee. In the first place it was very desirable that the law should distinctly define the powers of the Justices and those of the Chairman respectively. Considerable misunderstanding prevailed with regard to the relative powers of the Chairman and the Justices. In regard to the bustee question itself, the Chairman contended that he had power under the existing law to initiate measures of improvement without consulting the Justices. The Justices, on the other hand, contended that the Chairman had no power to initiate such measures without obtaining their sanction. Now it was very desirable that, as

the law was about to be consolidated, the powers of the Chairman and the Justices should be distinctly defined, so as to prevent future differences and misunderstandings. It might be well worth consideration whether the Chairman, who was the executive head, should not be more in the position of a moderator at the meetings of the Justices and have no power to vote. As the hon'ble member who spoke last had remarked, the Municipal Commissioner of Bombay had no seat in the Town Council. He would not go to that length, but would suggest, for the consideration of the Select Committee, whether the Chairman would not occupy a more dignified position by acting as a moderator than playing the part of a partisan when the measures proposed by himself were under discussion.

With regard to assessment cases and appeals, BABOO KRISTODAS PAL would allow appeals not only in assessment cases, but also in license cases. Though the Chairman under the law was authorised to regulate the license fees, as a matter of fact he had not time to do so, and the work was necessarily left to a subordinate officer in charge of the License Department. It was therefore very desirable that there should be an appeal to a Board of Justices in license cases. This was allowed, BABOO KRISTODAS PAL believed, under the Bombay Municipal Act.

Regarding assessment appeals, the hon'ble member who spoke last had correctly described the course followed in Bombay. The Board of Justices here, BABOO KRISTODAS PAL submitted, very much resembled the quarter sessions in Bombay; and if the law allowed the Chairman or Vice-Chairman to revise assessments made by the assessor, and if appeal was made from their decisions to a Board of independent Justices, the object aimed at by the hon'ble member would be attained.

The hon'ble member had referred to the case of the Port Commissioners. BABOO KRISTODAS PAL might mention that the assessment in that case was made on the principle that the additional buildings should bear the same proportion of assessment at which the existing buildings had been assessed; so there was no absence of principle in the assessment of the additional buildings of the Port Commissioners, as alleged.

Adverting to the water-rate, BABOO KRISTODAS PAL remarked that he could not conceive upon what principle one-fourth of the rate was made payable by the owner and three-fourths by the occupier. The water was laid on solely and exclusively for the benefit of the occupier. If the occupier was made liable for the police and lighting-rates, he thought that the occupier, on the same principle, ought to pay the whole of the water-rate. With regard to the mode of payment of the water-rate, he observed that it was now payable by the owner with power to recoup himself from the occupier. Now the lighting and police-rates were realized from the occupier direct, and on the same principle he thought the water-rate should be recovered from the occupier. He might observe that the law gave power to the owner to recover the water-rate from the occupier as an addition to his rent. Now, in the case of huts, this condition was attended with great hardship, inasmuch as under a recent ruling of the High Court the hut was an immoveable property, but removeable by the tenant. Thus the landlords now laboured under great difficulty in realizing their own

rents, and it was by no means fair to burden them again with the task of collecting the water-rate from the occupiers in addition to their own rents.

Lastly, he would invite the attention of the Council and the Select Committee to this question—Whether there ought not to be some provision in the Bill which would enable the Justices to co-operate with the rate-payers to make improvements, when the latter came forward to bear a share of the cost of such improvements? There had been lately several cases in which rate-payers offered to pay one-half of the cost for the piping of streets and lanes for drainage and water-supply; but the Justices could not be moved, as the law did not give the rate-payers power to demand such improvements on payment of costs. He thought that in such cases facility should be afforded to rate-payers to come forward and contribute. If, for instance, the residents of a bye-lane not supplied with water should combine and pay half the cost of the piping, the Justices ought to be made to pay the other half and carry out the improvement. There were many complaints heard in connection with this subject, and he believed that some such provision as he had suggested would stimulate the rate-payers to co-operate with the Justices to carry out improvements.

The Hon'ble Baboo Doorga Churn Law said, owing to an unfortunate occurrence in his family, he had not been able to go through the Bill. He saw that it was proposed to raise the maximum of the water-rate from five to six per cent; and considering the benefit derived from the water-supply and the increased demand for water, he had no objection to offer to the increase of the rate. But he thought it should be so adjusted as to be the least oppressive to the poorer classes of the town; and this was a point to which he had no doubt the Select Committee would give their attention.

As regards the lighting-rate, he did not think that power should be given to the Municipality to raise the rate from two to two and a half per cent. It was true that the proceeds of the present rate showed a deficit of some Rs. 16,000 to Rs. 20,000, but the deficiency had been supplied from the general fund, and this had been done without much inconvenience, and he thought that the practice should be continued.

Then, with regard to the question of allowing appeals from the assessments made by the Justices, he quite agreed with the hon'ble member on his right (Mr. Schalch) that provision should be made to allow appeals to be tried by some independent body, and the result, he thought, would be quite satisfactory to all parties concerned.

The Hon'ble Mr. Hogg said he did not propose to detain the Council by following the hon'ble members who had spoken upon the Bill. The suggestions they had thrown forth would be matter for the consideration of the Select Committee, to whom, he presumed, the Bill would be referred for consideration. He was glad to find that there was a general concurrence of opinion on the part of the Council that the water-supply must be increased, and that there would be no great opposition to increasing the rate provided the increased supply could be obtained. He quite agreed with his hon'ble friend to the right (Mr. Schalch), that there would be great advantage to the town if the constant supply could be continued. He would, however, ask the Council to

remember—and he spoke from the practical experience of several years—that to give a constant supply from the existing arrangements would be absolutely impossible. He believed he was correct in saying that this was the only city in the world in which it was attempted to give a constant supply by engine power. Throughout the world, wherever they had a constant supply, it had always been done by gravitation. If a constant supply was to be continued to Calcutta, they must have recourse to gravitation: that was to say, we should have to pump up to a large elevated tank and deliver water from that tank. By that system only would a constant supply be possible. But the cost of constructing a tank that would enable the Justices to supply ten or twelve million gallons of water a day to the town by gravitation on the constant supply system, would be so enormous that it must be put aside as impossible.

As regards assessments, the proposal for an appeal might be advisable in many cases. He could quite understand that the rate-payers could not always be satisfied that an appeal should be made from the Assessor to a Board of Justices. However, it must be borne in mind that to constitute such a Court would be a matter of great difficulty. It was true that it could be declared that an appeal should lie to the Small Cause Court; but he thought so many appeals would be instituted that it would be found practically extremely difficult to dispose of the cases without appointing some special officer for the hearing of such appeals. From his own experience, he must say that he believed that a Board of sitting Justices was a very fair tribunal for the disposal of assessment appeals. He might go farther, and say that he thought that the inclination of a Board of Justices was to fix the assessment at too low rather than at too high a rate. He did not, therefore, himself think that the establishment of an independent court of appeal was a matter of very great importance. The illustration brought forward by his hon'ble friend as regards the assessment of the port property, could hardly be allowed to pass without comment. He had declared that the assessment made upon the port property, if calculated upon the cost of the buildings, would come to the very large amount of twelve per cent. His hon'ble friend had, however, omitted altogether to take into consideration the value of the land belonging to the Commissioners. That land only was worth at least a million of money; and if the value of the land was taken into account, the assessment would not be found to be excessive.

The question of the advisability of altering the constitution of the Municipality had been mooted by his hon'ble friend to the right (Mr. Schalch), but it was one which Mr. Hogg approached with considerable hesitation. For a long time he had thought that it would be better that the constitution of the Municipality should be altered; but he begged to say now that he had, after much consideration, arrived at the conclusion that it would be difficult to provide a municipal government for Calcutta which would fulfil all its requirements better than the present one now did. He believed it was admitted that what we required was an intelligent body of gentlemen, and that they should fairly represent public opinion; that all matters should be

discussed by the Municipality in the most public manner possible; and that they should court publicity, the object being to ventilate all measures before they were carried out. And lastly, but not least, he thought that the Government should have a very considerable indirect control over the Municipality. He thought all these requirements were fully met by the existing constitution of the Municipality.

His hon'ble friend Mr. Schalch advocated the creation of a Municipal Board appointed chiefly by the public bodies in Calcutta. MR. HOGG could not support that proposal, on the ground that the public bodies referred to were only in a very limited degree representatives of the inhabitants of Calcutta. Europeans in this country were, as a rule, merely birds of passage, and would often take but a very partial view of all measures brought before them. By "partial" he meant that they would look upon the measures proposed more in the way they affected themselves. He did not mean these remarks to apply to public bodies of native gentlemen: they had a permanent interest in the town, and they would look not only to the direct and immediate advantages to the town, but they would look ahead to the time when their children would occupy their places. The members of the present Corporation, he thought, were carefully appointed, and might be regarded quite as much representatives of the different classes from which they were selected as would the members of a Board constituted on the plan proposed by his hon'ble friend. It was true they had many non-effective members: it was true, also, that they had much speaking—speaking which probably in many cases might well be omitted. However, the way in which the business was transacted did ventilate every subject most thoroughly, and it had induced the native public to come forward and take a direct and immediate interest in the affairs of the town, which he did not think the system of government conducted by a Board would ever do. The natives of particular parts of the town looked to certain Justices as their representatives, and made use of them as such.

However, there were one or two points which might well occupy the attention of the Select Committee; for instance, whether it would not be wise to so far modify the constitution that the Justices who formed the Municipality should not be appointed by the Government for life. He thought that the Justices should be appointed by the Government for a limited period, say for two or three years. If they showed an interest in the affairs of the town, and if they commanded the confidence of the public, then they should be reappointed. If, on the other hand, they were not prepared to devote their time to municipal affairs, they would cease to be members of the Corporation at the expiration of the time for which their appointment was made. This would lead to a gradual reduction of the number of the members of the Corporation, which was much needed; as at present, owing to the great number of Justices—about a hundred and twenty—the Corporation was found to be somewhat unwieldy for the quick dispatch of business.

HIS HONOR THE PRESIDENT, before putting the motion, desired to say that he had listened with great interest to the remarks which had fallen from the hon'ble members on the left, regarding the possible modifications in the

constitution of the Municipality of Calcutta. Well, that no doubt was a difficult subject. We should remember that very great good had been effected under the existing system. At the same time he admitted that if there ever were any constitutional modifications to be made in the Municipality of Calcutta, the present opportunity would be the most fitting they were likely to have for the consideration of such a change. He, therefore, for one should see no objection to the Select Committee, if such Committee should be appointed, taking up the question of any possible modification of the constitution of the Municipality. Indeed, he had already prepared a paper on that subject; and as he perceived that the matter was attracting the attention of various hon'ble members of the Council, he believed he should perhaps be meeting the wishes of hon'ble members who had addressed the Council, if he referred that paper to the Select Committee, if such Committee should be appointed.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the hon'ble Mr. Schalch, the hon'ble Mr. Reynolds, the hon'ble Mr. Brookes, the hon'ble Baboo Kristodas Pal, and the mover.

The Council was adjourned to Saturday, the 10th instant.

Saturday, the 10th April 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

STATEMENT OF THE COURSE OF LEGISLATION.

His Honor the President said: "As the Council is about to adjourn for a time, I think the present will be a suitable opportunity of reminding hon'ble members of the legislative programme which I presented to the Council on the 19th December last, that is about three and a half months ago, and also of calling to the recollection of hon'ble members the progress which we have made in carrying out that programme. Well, the Council will remember that on the 19th December last I had the honor of making a statement, which statement included the following measures:—The amendment of the excise law; the voluntary registration of Mahomedan marriages and divorces; the

alteration of the Jute Warehouse and Fire-brigade Act; the summary recovery of grain advances made by Government during the late famine; the appointment of managers in joint undivided estates; the compulsory registration of possessory titles in land; some additional improvements in the law for the sale of estates for arrears of land revenue; some emendation of the Act for the realization of arrears in Government estates; the simplification and improvement of the law relating to the private partition (or "butwara") of estates paying revenue to Government; the introduction of a law providing for the requirements both of the State and of the people in respect to canals of navigation and irrigation in Bengal, Behar, and Orissa; the consolidation of the laws regarding municipalities in the interior of the country under the Government of Bengal; the consolidation and amendment of the law relating to the municipality of Calcutta; the improvement of the Act concerning boilers and prime-movers; the introduction of a Bill regarding the recovery of the cost of boundary pillars, and other matters connected with village surveys in Bengal; the alteration of the law relating both to regular police and village police; the re-enactment, with suitable modifications, of the old laws regarding the levy, by private persons, of cesses on navigable rivers, high roads, and market-places; and possibly the application of the law regarding port-dues to some of the ports in Orissa and other parts of Bengal.

Well, that being the programme which was proposed for the acceptance of the Council, I will just for a moment remind hon'ble members of the progress which has been made in each and all of the above-mentioned heads, following the order of subjects which was observed in the opening statement. First, then, the Bill regarding the amendment of the Abkaree Acts has received the best consideration of Mr. Alonso Money, the Member of the Board of Revenue who had charge of that department; and after further consideration by the Government, a Bill has been drafted and has been transmitted for the previous assent of His Excellency the Governor-General. The Council will recollect that, under the provisions of the Indian Councils' Act, this Bill being one which relates to the imperial revenue, it is necessary to obtain the previous assent of the Governor-General; that assent has accordingly been asked for.

The next Bill, to provide for the voluntary registration of Mahomedan marriages and divorces, has, as hon'ble members will recollect, received the constant and repeated attention of this Council. The best authorities upon the subject of Mahomedan law, both at Calcutta and in the mofussil, have been consulted. The Council had over and over again considered and reconsidered the wording of every clause which affected the interests or the feelings and sentiments of the people concerned, and it has now, I may say, been finally settled in Council. We have done our best to render it a Bill suitable for the purpose in view, and acceptable to the persons and classes concerned.

The next Bill, for the amendment of the Jute Act, has been passed in Council, and has received the assent of the Governor-General.

The next is a Bill to provide for the summary realization of loans of money and grain advances made by Government during the late famine. It has also been passed in Council after special consideration by the Select

Committee, who had the advantage of having before them evidence obtained from the districts in question.

The next proposed law for appointing managers in joint undivided estates has not yet been submitted to the Council. The reason is that under instructions which we received from the Government of India, which instructions I had the honor to read to the Council in December last, we had to refer the measure back to the districts in the mofussil for the purpose of again consulting the various interests concerned, both zemindars and ryots; and as the Council will imagine, it takes a long time to collect replies from districts so many and so distant. And though we have collected a mass of various opinions, we have not yet been able to weld them into a shape fit for submission to the Council. But the matter is well in hand, and I hope before long we shall be able to submit an appropriate measure.

Then the Bill to provide for the compulsory registration of possessory titles in land has been drafted, and leave has been obtained in Council to introduce it. But it has been thought desirable, before proceeding further, to send the draft for the opinion of several Collectors; and those opinions are now being received, and I hope the hon'ble member in charge of the Bill will soon be able to submit it to the Council.

The next measure is a Bill to improve the sale law. It has not yet been submitted to the Council. The measure will, I think, prove to be not a very large one. The fact is that on consideration we found the sale law does not require very much amendment; but such amendments as can be suggested in justice to the owners of estates that may probably come into this predicament,—these amendments, I say, will be borne in mind, and I hope that shortly a short measure will be submitted to the Council.

The next is a Bill to provide for the realization of arrears in Government estates. It has been passed in Council, and has received the assent of the Governor-General.

Then comes a Bill to make better provision for the partition of estates paying revenue to Government, known as the Butwara law. It has been read in Council, and has been drafted in considerable detail, and with very great care, by the hon'ble member in charge, and is now before a very competent Select Committee.

The next is a Bill to provide for irrigation and canal navigation. It was read in Council, and has been referred to a Select Committee.

The Bill regarding the consolidation of the law relating to municipalities in the interior of Bengal has been also drafted with very great labour to those concerned. Leave has been granted to introduce it into Council, and I hope shortly to hear of its being referred to a Select Committee.

The Bill for the consolidation of the municipal law of Calcutta has also been drafted with great care and pains. It has been read in Council and referred to a Select Committee, and I trust that various additional improvements or possible changes in the constitution of the municipality will be considered by the Select Committee, and some decision will be arrived at in the course of the next session as to whether any changes in the municipal constitution are or are not really required.

The Bill to amend the Bengal Act relating to boilers and prime-movers has been passed in Council, and has been forwarded for the assent of the Governor-General.

Then a Bill regarding surveys and boundary pillars, the main object of which is to provide for the recovery of the cost of these boundary pillars, has been read in Council and referred to a Select Committee.

As regards the amendment of Act V of 1861, the regulation of the police—I mean the regular police as contradistinguished from the village police—nothing has been done in this Council regarding that. As the Council will remember, I explained in December last that it was doubtful whether it would be within the competence of this Council to proceed with legislation in that matter, considering the orders we have received from the Government of India. I have since had the advantage of very carefully considering this subject with the Inspector-General of Police, and I certainly am convinced that some legislation, either in this Council or in that of the Governor-General of India, will be necessary. I hope in the course of a short time to be able to inform this Council as to whether we shall attempt to proceed with legislation here, or whether we shall recommend that the matter be undertaken elsewhere.

As regards the village police, after further consultation with the authorities concerned, we have arrived at the conclusion that it is not necessary at present to trouble this Council with any proposal on the subject. We find that the law passed in 1870 on this subject was a very carefully prepared measure, which received the assent not only of the most experienced officers of Bengal at the time, but also the approval, after some discussion, of several native members of this Council,—gentlemen who represent some of the greatest landed interests in the country. That being the case, we find that this law has been as yet but partially carried out: that is to say, it was brought into operation in only a very few districts or portions of districts, and that a further trial of its working must be had in other districts before I can undertake to say that there are any defects in the law, and before I can venture to propose any amendment of it for the consideration of the Council.

The next measure proposed was the re-enactment of the old laws for the prohibition of the levy of illegal cesses in navigable rivers, high roads, and market-places, and for the regulation of such cesses as may be found equitable and lawful. Here also no measure has yet been submitted to the Council, but the matter has been undertaken by our hon'ble colleague Mr. Schalch, and I have no doubt that, with his knowledge and experience of the subject, he will before long be able to produce a suitable measure, which will simply be a re-enactment of the old law, which dates, I think, from 1790, with such suitable alterations or additions as may be called for by the circumstances of the present day.

As regards the ports of Orissa, the application to them of the law for levying port-dues, regarding which it was thought possible we might have to come here for legislation, the Council will have subsequently perceived that the levy of these dues in all ports in Bengal has been fully provided for by the Ports' Act. passed by the imperial legislature for the whole of British India.

So much for the measures which were proposed in the statement made in December last. We have since found it necessary to prepare Bills on two additional subjects. One has been to provide for a system of reformatory schools in or near the Presidency. I think all persons who feel much interested in the welfare of the rising generation will consider that it is very desirable to prevent so many persons of a tender age from growing up in vice, crime, and ignorance in the neighbourhood of so great and populous a town as Calcutta. The other Bill is to provide a more satisfactory and summary jurisdiction for the decision of suits and disputes regarding rent in cases where agrarian troubles or disturbances may be felt. I think all those who have practical acquaintance with landed affairs and interests in the interior of the country, will admit that when such troubles as those which occurred the year before last in parts of Bengal shall arise, it is necessary that the authorities who are responsible for the order and peace of their districts should have a more complete legal power than they have at command for bringing such disputes to a speedy and satisfactory termination. I hope that before long on both these matters we shall be able to submit measures for the consideration of the Council.

The result, I think, of the statement I have now the honor of making shows that we have passed some measures, and that with many others we have made a certain amount of progress,—a considerable amount perhaps relatively to the shortness of the time. But the statement also shows that we have still many measures in hand, and that constant and assiduous efforts will be required from the Council in general, and from hon'ble members in particular, in order to arrive at a satisfactory position during the next session.

The first Bill for immediate consideration in Council is that relating to canals of irrigation and navigation both in Bengal, Behar, and Orissa. I trust that in the course of a month or two, or three at the most, this measure may pass the Council.

Next after that I hope hat progress will be made by the Council at its sittings from time to time with the Bills relating to excise, surveys and boundary marks, and the sale law. These will not be very long or extensive Bills, and I hope it will not be taxing unduly the time, attention, and patience of the Council if I ask you to proceed with these Bills with as much speed as may be convenient.

There remains the Mofussil Municipal Bill, which I hope will soon be referred to a Select Committee, and perhaps be advanced some stages during the ensuing months, and possibly passed by the Council within a comparatively brief time.

Besides these there are some long and heavy measures, which I believe will occupy the time of the Select Committees during the whole of the summer. These are the measures relating to the management of joint undivided estates, the registration of possessory titles in land, the law of partition of estates, and the Calcutta municipal law. But still I am sure we may trust to the industry of very competent and able Select Committees that have been, or will be, appointed for the consideration of these Bills, to advance them to such a stage that they shall be passed during the ensuing winter session.

And besides these, as I have already said, we may have to trouble you with Bills regarding the regular police, the regulation of private cesses on rivers, high roads, and market-places, the summary jurisdiction of rent suits, and the establishment of reformatories.

This, then, is the substance of what I have to state regarding the present and immediate future of our legislation. I need not say that while we endeavour to do what is necessary in every direction, we shall also carefully avoid anything like over-legislation. It is sufficient for us to take up measures as they appear to be called for either by the state of public opinion, or the actual needs and circumstances of the country. We must bear in mind that this is an old established province, with a settled administration, and that extensive and speedy changes are not likely to be required. We may also bear in mind that of late years a great number of extensive improvements have been commenced. Still we cannot afford to stand quiet without moving. We know that stagnation generally ends in retrogression: and we must therefore vigilantly watch for the means of carrying out such progress and such reforms as may be legitimately called for. The best endeavours of the Government of Bengal will be directed to this object; and I am sure that in giving effect to it, we may count on the assistance and co-operation of the many experienced gentlemen who sit in this Council, and represent such important and varied interests.

I think the progress we have been able to make during the last three months shows how very necessary it was to obtain the exclusive services and undivided attention of our excellent colleague, Mr. Dampier. I am sure we are also much indebted for the learning, assiduity, and constant attention to the several consolidation measures which have been drafted by our learned Secretary, Mr. Millett. As he is going away for a short time, I feel confident that the talents and aptitude of his successor will in some degree fill the gap which will be made by his (Mr. Millett's) departure. And as I am obliged to proceed elsewhere for the present, I am sure during my absence, whenever the Council may have to meet, the experience and ability of our hon'ble colleague Mr. Schalch, as President in my absence and in my place, will be given to the measures that may be pending before this Council."

The Council was adjourned to a day of which notice would be given.

Saturday, the 24th April 1875.

Present:

The Hon'ble V. H. SCHALCH, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble BABOO KRISTODAS PAUL,
and
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.

SETTLEMENT OF DISPUTES REGARDING RENT.

THE HON'BLE MR. DAMPIER said, at the meeting of the 10th April the Lieutenant-Governor prepared the Council for the measure which MR. DAMPIER had now the honor to lay before them in these terms:—

"The other Bill is to provide a more satisfactory and summary jurisdiction for the decision of suits and disputes regarding rent in cases where agrarian troubles or disturbances may be felt. I think all those who have practical experience with landed affairs and interests in the interior of the country will admit that when such troubles as those which occurred the year before last in parts of Bengal shall arise, it is necessary that the authorities who are responsible for the order and peace of their districts should have a more complete legal power than they have at command for bringing such disputes to a speedy and satisfactory termination. I hope that before long on both these matters we shall be able to submit measures for the consideration of the Council."

This measure was, in the fullest sense of the term, a Government measure. With the progress of events and the increase of knowledge, differences had arisen which from time to time threatened to disturb the peace and good order of large portions of districts. The means which under ordinary circumstances were found sufficient for good government, did not suffice under these special circumstances:—did not suffice when, to use the Lieutenant-Governor's words, whole classes of men were becoming angry with one another. The Government had found it necessary to come to the Council for extraordinary powers to deal with these cases. The Lieutenant-Governor personally had stated at length, in a minute which was in the hands of members, the circumstances which had led to his so coming to the Council, and the nature of the special powers which the Government considered would be best for the peace and good government of the country. Nothing would be gained by MR. DAMPIER's adding to what the Lieutenant-Governor had written, and therefore he begged to move for permission to introduce a Bill to provide for inquiry into disputes regarding the rent payable by ryots in certain cases, and to prevent agrarian disputes.

The motion was agreed to.

The HON'BLE MR. DAMPIER said, the measure which he had the honor to bring to the notice of the Council was not, he supposed, one which took any member by surprise. He might say that public opinion had for some time been occupied with the subject; and there was, he thought, a consensus of opinion that some special measure of this sort was necessary to put an end to what threatened to be a scandal to our Government. The subject had been much ventilated and discussed outside of the Council: and as, from the very nature of the Bill, it was desirable that it should be passed as soon as possible, he had no hesitation in asking the President to suspend the rules for the conduct of business in order that he might get the Bill on one stage farther.

The PRESIDENT having declared the rules suspended—

The HON'BLE MR. DAMPIER, in moving that the Bill be read in Council, said he should lay before hon'ble members the general scheme of it shortly. The Bill provided that the Lieutenant-Governor might set in motion this extraordinary procedure whenever he considered it necessary for the maintenance of peace and for good government generally. When he considered this to be necessary, he would vest the Collector or other officer with the special powers of the Bill.

When a difficulty arose of the character which this Bill was intended to meet, it usually so happened that the dispute between the zemindars and ryots involved some general question which affected each individual ryot, such as in the Dacca instance which the Lieutenant-Governor had given in his minute. The general question there was whether the rise in the value of produce since the last time that rents were adjusted was such as to make it fair and equitable that rents should be raised by four annas a beegha. Another instance of a general question which often arose was as to the length of the *hath* or cubit, or unit of measurement. The zemindars and ryots might be agreed that at a certain point of time the rent paid for certain kinds of land was eight annas a beegha. Unfortunately this agreement did not bring the matter so near to a solution as would seem at first sight. Hon'ble members were aware that every beegha consisted of a fixed number of *luggees* or poles squared, and every *luggee* of a certain number of cubits or *haths*. Unfortunately the cubit did not consist of a fixed number of inches or fingers, and a different *hath* was in vogue in different pergunnahs. In Pubna, where disputes were going on two years ago, the ryots of some estates claimed that their rents were fixed with reference to a beegha measured according to the cubit or *hath* of a certain traditional saint, who was noted for the extraordinary length of his arm. The zemindars denied this, and so the dispute went on. In former times there used to be in a corner of the Collectorate a bunch of sticks, sealed at each end, which represented the standard of measurement in different pergunnahs.

According to the ordinary procedure, there was no way of taking up such general questions and deciding them finally as general questions. The zemindar might single out a representative ryot, and take him through the court of first

instance, and through all the mazes of appeal, and get the point decided by the highest court. No doubt, if the ryots were reasonable, they ought to accept that finding and agree to a settlement accordingly. Unfortunately, when the ryots "got angry" and were in that state of combination which it was one of the objects of the Bill to meet, ryot No. 2 would not accept the decision given in the highest court of appeal in the case of ryot No. 1; and he opposed the zemindar by *vis inertiæ;* and so the zemindar might have to carry on suits against his ryots one by one in detail, and through all the courts.

It would be seen that the remedy which the Bill proposed for this state of things was that when the Lieutenant-Governor was satisfied that such an unfortunate dispute existed, and had determined to bring the machinery of the Bill into operation, he should propound certain general questions for decision, and should require the revenue officers to make a local and personal inquiry, and to come to a general finding upon them. This finding, when formally arrived at and declared, would be binding upon those particular points on the courts in the disposal of cases. The finding on the general questions having been so arrived at, the Bill provided that they might be applied by one proceeding to the cases of any number of individual ryots. The zemindar might bring his suit of enhancement against any number of ryots jointly, or any number of ryots jointly might bring a suit for abatement against the zemindar. The circumstances of each individual would be carefully considered, but the one decision would bind all, defining particularly to what extent it applied to the case of each ryot.

The third point in the Bill was that so long as an estate was under the operation of this extraordinary measure, all suits for rent should be tried by the officers who exercised the special powers of the Bill, and by no other courts. Those who were familiar with the mofussil, would at once see how necessary it was that the hands of the special officers should be strengthened on the one hand; and on the other hand they would be personally on the spot making local inquiries, and this particular work would take precedence of all other work on their hands. Therefore, it was for the good of all parties that, so long as this state of things existed in any estate, the people should have to look to one set of officers only as judges in these rent matters.

The Hon'ble Baboo Kristodas Pal said he regretted the necessity which had compelled the Government to bring in this Bill. It was an exceptional measure, but exceptional circumstances required exceptional remedies. Hon'ble members of this Council were aware that for some years past the feeling between the zemindars and ryots in several districts in Bengal had been far from what was desirable and what ought to subsist between them, and in some cases this feeling had found expression in overt acts of disturbance. In 1873 troubles of a serious character broke out in Pubna, and he was afraid that the contagion would have spread to other districts if the common calamity which threatened us in 1874 did not for a moment prevent the spread of that feeling. The zemindars and ryots were then equally anxious for their own existence as

it were, and angry feelings consequently gave place to the desire for mutual help and protection. But troubles had again broken out in some of the Eastern districts. His Honor the Lieutenant-Governor, in the minute which had been circulated to members, had called attention to certain facts which established the necessity of a measure of this kind. Baboo KRISTODAS PAL had some opportunities of knowing how things were getting on between ryots and zemindars in several districts, and he must say that unless some measures were taken to promote peace and harmony between them, the tranquillity of the country might be endangered, and the Government called upon to take stronger measures than that now proposed. The present law was not sufficient to meet cases of organized combination among the tenantry. The civil court procedure was too dilatory, expensive, and harassing, and it was therefore necessary that there should be a summary procedure for the settlement of rent disputes. The present Bill contemplated a summary settlement; and if it were carried out with care, judgment, and tact, he believed the Government would succeed, as it intended to do, in throwing oil over troubled waters.

There were, however, some points connected with this Bill which involved, he might say, questions of principle, and to which only he would briefly advert. In the first place this Bill left everything to the discretion of the revenue officer. No principle was laid down on which he was to settle the question of rates of rent. Now, hon'ble members were aware that the whole rent question was a question of rates of rent. Until the rise in the price of produce, which dated, BABOO KRISTODAS PAL might say, from the Crimean War, there was little dispute practically between zemindars and ryots. There was not before that active incitement to enhancement of rent which was now in operation. Whatever increase was then made, it was generally amicably settled between zemindars and ryots; the law courts were seldom appealed to. But since the rise in the price of produce, there had been continually going on a struggle between the landlord and tenant as to the proportion which the rent should bear to the produce of the land. This struggle had been intensified, he might say, by the rent law. Act X of 1859, which was justly regarded as the ryots' charter, had unfortunately introduced an element of uncertainty and indefiniteness as to the proportion which the rent should bear to the produce of the land. Many conflicting decisions had been passed by the High Court upon the subject; and from the day the Act was passed to this day, the question of the rate of rent remained unsolved. If some simple rules could be laid down which would lead to the determination of a fair and equitable rate of rent, he thought the present rent difficulty would disappear. It was, he admitted, a very difficult and complicated question; but he might mention that several suggestions had been made by experienced persons on this subject. One was this, that the gross produce of the land should be divided between the zemindar and the ryot in a definite proportion; that was to say, three-fourths going to the ryot, and one-fourth to the zemindar as rent. That was one suggestion. If hon'ble members would

inquire, they would find that in many districts the proportion of rent received by the zemindar was more than one-fourth of the gross produce, and in some districts it was less; but he believed it would be equitable and just, both to the zemindar and the ryot, if the proportion were laid down at three-fourths to the ryot and one-fourth to the zemindar.

The next suggestion was this, that the rate of rent should be fixed on the competitive rate prevailing in the village or pergunnah. The competitive rate meant the rate of rent at which the jotedars or farmers or other holders of land let the land to cultivating ryots. There was a competition for land by the cultivating ryots, and the rate they paid was called the competitive rate. Taking that as the rate of rent, the rate for an occupancy ryot might be fixed at such a rate as would secure him the benefit of the tenant right he enjoyed, and this could be done by allowing him a deduction at a certain percentage from the competitive rate so found and determined. This suggestion was based upon the principle followed in the Oude Rent Act. According to that Act the occupancy ryot was liable to pay the rate of rent minus 12½ per cent., which a tenant-at-will paid.

The third suggestion was this, that the average of the price of the produce of the land for the last ten years might be taken with the cost or outgoings which the ryot incurred, and the proportion which the then existing rate of rent bore to the gross value of the produce, and similarly the average price of the produce at the present day with the outgoings, and the proportion the rate of rent bore to the value of the gross produce at the present day; the difference which might be found between the two rates should be made up by an abatement or enhancement of rent in like proportion. That was to some extent the principle laid down by Mr. Justice Trevor in his judgment in the great rent case.

There might be other suggestions which might meet the difficulty one way or another. But BABOO KRISTODAS PAL thought that some definite principle ought to be laid down, upon which the revenue officers should proceed under this Bill in settling disputes as to the rate of rent. He believed it was intended that the Board of Revenue should prescribe rules as to the manner in which the Collector should make inquiries and report their proposals for sanction; but he did not know whether it was intended that the Board should provide rules also for the guidance of the Collector in the determination of the rate of rent. If that was the object, he thought the more regular course would be to embody such rules in the Bill.

The hon'ble mover had pointed out the advantage of determining or settling disputes in a pergunnah or in portions of a district in one proceeding or decision. BABOO KRISTODAS PAL admitted that in cases of measurement such a proceeding would be perhaps desirable; but he doubted whether, in cases of enhancement of rent, such a proceeding would be always convenient; for different ryots might have different pleas, and the revenue officer would be bound to inquire into the different pleas so preferred, and it might greatly complicate matters if one proceeding were to govern the cases of all ryots.

The Hon'ble Baboo Kristodas Pal.

Then the Bill as it was framed provided for no appeal either to the Commissioner or to the Board of Revenue, but left it to the Commissioner and the Board to exercise a general power of supervision over the proceedings of the Collector. BABOO KRISTODAS PAL would divide rent cases into two classes, viz. enhancement cases and arrear cases. In arrear cases, where the question was simply whether the ryot owed a certain amount as rent, he thought it would not lead to much hardship if the right of appeal were taken away, though there might be cases of a certain description in which even arrear cases might involve questions of right indirectly. But enhancement cases were of a different description; and as it was proposed that the rate of rent determined by the Collector should have currency for a period of ten years, he thought it was very important and necessary that an appeal should be allowed from the decision of the revenue officer to the Commissioner and Board of Revenue. Very important questions might be involved in enhancement cases, and much would depend upon the particular idiosyncrasy of the officer who would decide these cases. One officer might be friendly to the zemindar, another might be opposed to the ryots, and *vice versâ;* and thus most important interests of zemindars might be imperilled, or a whole body of ryots might be ruined, by the proceedings of the Collector. In such important cases, BABOO KRISTODAS PAL thought, an appeal should be allowed to the Commissioner and the Board.

The Bill, he thought, was a move in the right direction; and if it were properly revised and amended, he believed it would be acceptable to all classes interested in the land.

The HON'BLE MR. DAMPIER said he had the honor of stating just now that this Bill was in the purest sense a Government measure, and he presented it to the Council, with the exception of a few verbal alterations, in the shape in which it was sent to this Council by the Executive Government. No doubt the Government expected that it would be altered in its details in Select Committee, which would certainly give great attention to such an important Bill as this. There were only two points he wished to notice in his hon'ble friend's speech. The hon'ble member had said it might be objectionable in some cases to join a number of ryots as defendants or plaintiffs, because the circumstances of some of them might be so very different from some of the others. Now, MR. DAMPIER knew that this particular provision was taken from one of the North-Western Provinces' Revenue Acts. However, he quite saw the difficulty which the hon'ble member suggested. Still it seemed to MR. DAMPIER that there should be some way of applying the general finding which had been arrived at by the Collector with the approval of the Commissioner and the Board of Revenue, and giving it the force of a decree, as it were, against any number of ryots or on behalf of any number of ryots against the zemindar by one single proceeding. He thought there should be a power to join in one proceeding all the cases arising in an estate, and to make the same order apply to all those cases, if there were no particular reason against it. It appeared to him that if this Bill should go to a Select Committee, some such modification as this might be made,—that suits might be brought against any number of defendants jointly or by any number of

plaintiffs jointly, and that after making all due inquiry the deciding officer should make his order cover the case of as many of such plaintiffs or defendants as it could conveniently be made to cover, and should leave out others whose cases he thought ought to be considered with reference to their special circumstances.

With regard to the other point, viz. an appeal to the Commissioner and the Board, MR. DAMPIER had pointed out that in the scheme of the Bill the first thing was a general executive finding or declaration upon a general question. This finding being accepted as the datum, the next thing was to apply it to each particular ryot's case and circumstances by a suit. The words used in the Bill were that the Collector should come to the general finding by proceedings under the control of the Commissioner and the Board; but practically the course should be that the Collector would submit, for the consideration of the Commissioner and the Board, the conclusions to which he had arrived, and should declare his finding with their approval, so that that declaration would in fact be in accordance with the views of the higher revenue authorities, and therefore an appeal would be unnecessary to them on the points involved in that finding. As regards the application of the general finding to individual cases, MR. DAMPIER thought it would be necessary to provide an appeal. He did not think there should be a right of appeal to the Board; and whether the right of appeal should lie to the Commissioner with a power of revision reserved to the Board, would be, he thought, a very important matter for the Select Committee to consider.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Schalch, the Hon'ble the Acting Advocate-General, the Hon'ble Mr. Reynolds, the Hon'ble Baboo Kristodas Pal, and the Mover, with instructions to report in a month.

The Council was adjourned to a day of which notice would be given.

Saturday, the 1st May 1875.

Present:

The Hon'ble V. H. SCHALCH, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.

MOFUSSIL MUNICIPALITIES.

The HON'BLE MR. DAMPIER said, when asking for leave to introduce a Bill to amend and consolidate the law relating to municipalities, he said that we

should take the Bill of 1872 as the general model, throwing out such provisions of it as had not met with the approval of the Governor-General, and against which general opposition was expressed. He said that it would not be the object of the present Bill to increase taxation, and he thought hon'ble members would find that the Bill fulfilled those conditions.

In the first section a new provision was introduced; he meant one which was not in the Bill passed by this Council in 1872. It would be inconvenient that it should be necessary for the Lieutenant-Governor, the moment this Bill became law, again to notify all the municipalities; and therefore the first section provided that this Act should at once be in force in every municipality which was now under the District Municipal Improvement Act of 1864, and in every town which was under the District Towns' Act of 1868. The Bill would at once take the place of those two Acts in the towns in which they were now in force, and the mode of taxation which was in force in each town under those Acts would continue to be in force under the new Act until any special alteration was made. Then clause (*b*) gave the Lieutenant-Governor power to extend the Act to other towns and places.

The second section, with the schedule to which it referred, repealed eleven Acts, and got rid altogether of them from the Statute Book.

Passing on to the 2nd chapter, the 5th and following sections were of importance. The provisions of the old Bill had been adhered to as regards the tracts of country which might be made first class municipalities; there must be a minimum of 15,000 inhabitants, and the average number of inhabitants must be not less than 2,000 to the square mile; for first class municipalities those limits had been adhered to.

The old Bill provided for second and third class municipalities,—rural communes, as the late Lieutenant-Governor called them. The third class had been thrown out altogether in this Bill, and other limiting conditions had been imposed as to the tracts which might be declared second class municipalities. It was provided that such tracts must contain at least 1,000 inhabitants, and the average number of at least 500 to the square mile, or half the density of the population of a first class municipality. It was provided that the majority of the adults must be employed in non-agricultural occupations; and when the nucleus for these municipalities had been obtained under this provision, section 8 provided that other places, not being more than half a mile distant from one another, might be joined so as to form a union. This was to meet the case of places which might be called suburbs of the towns which were created municipalities. It would be seen that, as a consequence of not adopting the third class municipalities of the old Bill, all the provisions of Part XII of that Bill, as to village chowkeedars and chakran lands, which were objected to, fell out of the new Bill, which left the existing law intact upon those subjects.

The third chapter treated of municipal authorities and the constitution of municipalities, of which he would notice the chief points. The Lieutenant-Governor might direct the election of not less than two-thirds of the Commissioners by votes of the rate-payers. He might remove a Commissioner for certain reasons which were specified in section 14, for corruption or continued

neglect to attend the meetings of the Commissioners, or otherwise to discharge his duty as a Commissioner or member of a Ward Committee. The Magistrate of the district or division of a district in which a municipality was situated, as the case might be, was *ex officio* to be Chairman. The Lieutenant-Governor might also appoint other persons, holders of appointments under Government, to be *ex officio* Commissioners, but under the proviso that not more than one-third of the whole number of Commissioners should be persons holding in the Judicial, Police, or Revenue departments of the Government service salaried offices, of which the functions were exercised within the district in which the municipality was situated, unless such persons were elected Commissioners otherwise than by appointment by the Lieutenant-Governor. The 17th and following sections provided for the retirement of the Commissioners by rotation. It was desirable to have new blood among the Commissioners; but it was provided that any retiring Commissioner might be re-appointed, so that the services of any one who was particularly valuable amongst the Commissioners could be retained. The time of service of the Commissioners was limited to three years ordinarily; but it would evidently be very inconvenient to have all the Commissioners retiring simultaneously at the expiration of the third year from the first appointment of the Commissioners, and therefore a mechanism was provided in section 18 by which one-third of the Commissioners should retire in each year up to the end of the third year, so that the Commissioners would only lose one-third of its members in any one year. Section 23 provided that the Commissioners should elect their own Vice-Chairman, subject to the approval of the Lieutenant-Governor, and that such Vice-Chairman might be removed by a resolution of the Commissioners in favour of which not less than two-thirds of the Commissioners should have voted.

The second part of the chapter provided that the Commissioners under the Act should succeed to the rights and liabilities of the Commissioners, Committees, and Punchayets appointed under the old Acts, of which it took the place.

In part 3 of the same chapter, of the mode of transacting the business of the Municipality, it would be noticed that the quorum in a first class municipality was five, and in a second class municipality three. Section 37 defined that the Chairman should, for the transaction of the business of the Commissioners, exercise all the powers of the Commissioners, provided that the Chairman should not act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or exercise any powers which were directed to be exercised by the Commissioners at a meeting.

Part 4 of the same chapter provided for Ward Committees—off-shoots of the municipal body, whom they might cause to be elected or might appoint to perform any duties which the municipal body might delegate to them in any specific parts of the Municipality; such Committees would elect their own Chairman.

Part 5 related to the liabilities of the Commissioners and Ward Committees. It was provided as usual that no Commissioner or officer or servant of the Commissioners should be interested in any contract made with the Commissioners, and so on.

The Hon'ble Mr. Dampier.

Chapter 4 was in regard to the municipal fund and its application. By section 48, the first charge on that fund was the payment of police, such police as, under the power laid down in this Act, should have been fixed by the Government as sufficient for each municipality. This was one of the compulsory charges which the Commissioners must meet. There was also one other compulsory charge, which would be found in the last section of the Bill; it was that entailed by the duty of keeping up such portions of district roads (the lines of road which outside the municipalities were kept up by the Road Cess Committee,) as fell within the municipal limits. The last section of the Bill provided means by which the Government could enforce the performance of these two duties. If the Commissioners did not themselves pay the amount which was due for police, and if they failed to keep up those portions of the main arteries of communication which lay within their own municipality, then the Lieutenant-Governor might take the matter out of their hands, might supersede them *pro hac vice*, and authorize the Magistrate to levy the money and perform the duties himself. With these two exceptions, it was left optional with Municipal Commissioners to spend money on the objects specified in section 49, viz. the construction, repair, and maintenance of roads, wharves, embankments, channels, drains, bridges, and tanks; the supply of water and lighting of roads, and other works of public utility calculated to promote the health, comfort, or convenience of the inhabitants; the diffusion of education, and with this view the construction and repair of school-houses, and the establishment and maintenance of schools either wholly or by means of grants-in-aid; the establishment and maintenance of hospitals and dispensaries; the promotion of vaccination; and for carrying out the purposes of the Act generally. When he said it was left optional with them, he meant that no special procedure was provided in this Act by which these things could be done, or by which the Municipal Commissioners could be forced to do them.

One main difference between this Bill and that of 1872 was that section 168 of the old Bill made it compulsory upon the Municipality to contribute towards vernacular education. That was one of the clauses to which the Governor-General objected, and others also. The clause had been omitted, and it had been left optional with the Municipal Commissioners to contribute to this object of education, whether vernacular or higher.

Another very important item which appeared in the old Bill had been omitted. In the old Bill, one of the objects for which Municipal Commissioners might expend their funds was the support or relief of the poor in times of exceptional distress. That was not considered to be a legitimate object of expenditure of the municipal funds, and therefore it had been omitted from the present Bill.

Then followed the provisions as to the accounts and preparation of estimates. The Commissioners were to send their estimates to the Magistrate, who would pass them on to the Commissioner of the division with his remarks. The Commissioner might return them with any objection which he might have to make, and these would be considered by the Municipal Commissioners at a special meeting called for the purpose, and the decision of the majority of the

Commissioners attending at such meeting would, subject to the provisions of section 56, be final. In other words, there was no power reserved either to the Magistrate or the Commissioner of the division to over-rule the decision to which the majority of the Municipal Commissioners at a meeting might adhere. MR. DAMPIER hoped this fulfilled to the satisfaction of hon'ble members the intention of making the Municipal Commissioners free of control.

The municipal accounts would be audited by such person as the Lieutenant-Governor would direct; and section 59 provided that the municipalities should be bound to contribute towards the cost of such establishment as might be necessary in the offices of the Magistrate and the Commissioner of the division for municipal duties. The work thrown upon them was occasionally very heavy, in such districts especially as the 24-Pergunnahs, where there was a very large number of municipalities.

Chapter 5 was the most important of all, and differed materially from the provisions of the old Bill. He said, in asking leave to introduce the Bill, that it would not be the object to increase taxation, and that they should retain only those taxes which were familiar. Accordingly they had thrown out the following taxes, which appeared as alternative taxes in the old Bill: the tax upon trades and callings, the tax upon processions, the octroi duties, the duties upon boats moored within the limits of municipalities. These four taxes they had thrown out, and the scheme of the present Bill was this. There were two main taxes alternative to one another, either of which the Commissioners might adopt for their municipality. The first was a tax upon persons occupying holdings within the municipality, according to their circumstances and their property within the municipality. This was nothing but the old and most familar mode of municipal taxation in Bengal,—the mode under the Chowkidaree Act of 1856 and the District Towns' Act. It was a rough method of taxation, but there was to be said for it that it was well understood, and that several of the municipalities which were now under the District Municipal Improvement Act,—the more advanced municipalities, in which the more strictly accurate mode of taxation, by a percentage on the annual value of all holdings situated within the Municipality, was in force; several of these municipalities which had this more perfect mode of taxation had cried out that it was not suitable to their circumstances, and had asked for a law which would enable them to impose the more primitive mode, which was called in this Bill a tax upon persons occupying holdings according to their circumstances and property within the municipality.

For those municipalities which preferred the more perfect and more advanced form of taxation, it was allowed, as an alternative, to impose a tax on the annual value of holdings. That was also a well-known mode of taxation now. In the case of both these taxes the Bill adhered to the maximum imposed on each by the existing law; so there was no increase of taxation in respect of them.

Besides these two main taxes, were three minor taxes, one or all of which might be imposed in any municipality,—the tax upon carriages, horses, and other animals, the fees on the registration of carts, the tolls on ferries and roads. Wherever there was a ferry, there must be tolls charged; the Municipal Commissioners could scarcely be expected to incur the cost of maintaining a ferry

for nothing. A toll upon roads was optional, and might be imposed or not according to the discretion of the Commissioners. Then as to the fee on the registration of carts: this was in force in some municipalities now, and would certainly not be adopted by any municipality except those which were towns of some importance, and in which carts were generally employed for purposes of trade. As to the tax upon carriages, horses, and other animals, it was obvious that this was a tax on luxuries, which it was quite right to impose wherever there were enough of carriages and animals to make the imposition of the tax remunerative.

Part III of this chapter contained provisions as to the mode of assessing and levying taxes; these provisions had been rearranged, but it was not necessary to notice them now.

As to Part V, regarding the tax upon carriages and animals, he would only notice that in the old Bill the schedule imposed a tax upon bullocks. He had omitted that as undesirable; and even where a town was of such extent that carts were extensively employed within it for other than agricultural purposes, he thought the fee on the registration of carts was the better way of levying the tax. As it stood in the old Bill, there was no limit whatever as to the class of bullocks to be taxed, and no exception made as to bullocks employed in agriculture or any other.

Chapter 7 related to municipal police. The provisions of Parts VII and VIII of the old Bill had been objected to by the Governor-General, who did not approve of the relations between the Government and the municipality in regard to police being altered so summarily, so that the sections of the present Bill maintained the relations between the Government and the municipality as to the police, and the status of the municipal police, as they stood under existing laws.

The chapter relating to the registration of births and deaths had been omitted. It was a reproduction of the Act which existed upon that subject. The Act could not properly be struck out of the statute book, because it might be made applicable to places other than municipalities. As they could not get rid of the Act altogether, he saw no advantage in reproducing its provisions here; so that in the place of the chapter which appeared in the last Bill, this Bill merely provided in one section that every first class municipality should, and every second municipality might, provide for the registration of births and deaths within the limits of their jurisdiction in accordance with the provisions of Bengal Act IV of 1873 (for registering births and deaths).

Similarly, he had omitted chapter 6 of Part XI of the old Bill, which was a reproduction of the Act relating to the prohibition of inoculation in certain tracts of Bengal. That Act might also be applied, and he believed had been applied, to places other than municipal towns, and therefore could not be wiped off the statute book. As it must remain there, he thought it might as well remain under its own number and year than be imported bodily into this Bill. The Bill provided that vaccination was one of the objects for which the Commissioners might contribute, and left it to the Lieutenant-Governor to exercise the powers, under the special Act, of prohibiting inoculation in any municipality

in which he should think that sufficient arrangements had been made to provide means for vaccination.

Chapter 9, relating to municipal regulations, need not be noticed in detail. He would only call attention to section 155, which was introduced in reference to a case which arose at Serampore, where the Magistrate declared a certain thing to be an illegal obstruction, and the Commissioners proceeded to remove the obstruction, for which they were sued, and it was held that the Magistrate's order did not protect them while carrying it out. Section 155 ran thus:—

"An order made by the Magistrate under either of the two last preceding sections shall be deemed to be an order made by him in the discharge of his judicial duty, and the Commissioners shall be deemed to be persons bound to execute lawful orders of a Magistrate within the meaning of Act No. XVIII of 1850 (for the protection of judicial officers)."

Chapter 11 provided that the Commissioners might make bye-laws, with the approval of the Lieutenant-Governor, and sections 186, 187, and 188 provided penalties for infringements of such provisions of the Act as would not be ordinarily punishable under the Penal Code. He had already noticed the effect of the last section of the Bill, which was to enable the Lieutenant-Governor to direct the Magistrate to do certain things if the Municipal Commissioners should fail to do them.

With these remarks he would move that the Bill be read in Council.

The Hon'ble Baboo Kristodas Pal said, phœnix-like, this Bill had risen from the ashes of the old Bill, which was vetoed by His Excellency the Viceroy for reasons well known to this Council. It appeared from the lucid statement which the hon'ble member had made that he had taken great care in revising it. The old Bill was open to diverse grave objections, and although the hon'ble member in charge of the Bill had removed many of those objections, Baboo Kristodas Pal was not prepared to say that he had been completely successful. He had cursorily compared the new Bill with the old one, and pointed out some of the provisions which he had eliminated from the present Bill. Baboo Kristodas Pal would venture to call the attention of the Council to some of the salient points in the present Bill which he thought required modification and amendment. First, as to the creation of municipalities. The hon'ble mover had explained that he had retained the provision of the old Bill defining first class municipalities. That provision was that first class municipalities should comprise a tract of country containing at least 15,000 inhabitants, and the average of the population to the square mile should not be less than 2,000. Now hon'ble members of this Council, who were conversant with the constitution of mofussil municipalities, were doubtless aware that the formation of municipal unions was productive of great hardship and heartburning in the mofussil. A town was taken as the centre of a municipal union, and all outlying villages were added to it as component parts of that union. Now the municipal fund was generally not so rich as to enable the Commissioners to do equal justice to different parts of the municipal union, and the result practically would seem to be that the poorer rate-payers generally paid for the benefit of the rich. Not to go to a distance, Baboo Kristodas Pal would invite attention to the constitution of the suburban municipality.

The Hon'ble Mr. Dampier.

Now, that municipality comprised some of the outlying villages about the Salt Water lakes, fishermen's hamlets, which, from their position, could receive, and did practically receive, very little attention; and yet the inhabitants of those villages were made to pay in equal proportion with the inhabitants of the more favoured parts of the municipality. The same observation applied to the Howrah municipality. Whilst the town of Howrah was lighted with gas, the village of Satguchia, for instance, which was about four miles off, had no great attention paid to its wants. He believed the inhabitants of Bally not many months ago petitioned the Lieutenant-Governor for separation from the Howrah municipality, because that village did not receive adequate attention. Many other cases might be cited in which it was seen that the inhabitants of the outlying villages comprising the municipal union had, compared with their means, paid more and received less than the residents of the more favoured portions of the municipality. On this ground he would suggest that no village or place should be added to a municipal union which had not at least, in the case of first class municipalities, 500 houses, and in the case of second class municipalities which had not 300 houses in it. It was observable that in some cases some villages might not be fit to be associated with a first class municipality, but might well form the centre or part of a second class municipality. But as the section was worded, it left a wide door for the extension of municipal taxation to these comparatively poor villages. It was also worthy of remark that the definition of the word 'place' gave the Government power to include not only a town or suburb, but any village or hamlet in which the majority of the adult male population was chiefly employed in pursuits other than agriculture, however small the size and sparse the population of such village.

Then he came to the constitution of Municipal Boards or Commissions. He observed that this Bill gave power to the Lieutenant-Governor to extend the elective system to second class municipalities, but not to first class municipalities. It was not for him to discuss here whether the elective system should be indiscriminately introduced into the mofussil, but it struck him that if it was to be introduced at all, it ought to be introduced first into first class municipalities, and then into second class municipalities, if it worked satisfactorily enough in first class municipalities. But section 12 of the Bill said that the Lieutenant-Governor might at any time direct the whole or any number, not being less than two-thirds, of the Commissioners, to be appointed under the last preceding section. Now the last preceding section referred to second class municipalities only. [The HON'BLE MR. DAMPIER: That was an oversight.] Well, then, considering it was an oversight, he would not proceed further upon that point.

Then he found that the term of office of Municipal Commissioners was limited to three years. He agreed with the hon'ble mover that it was very desirable to infuse new blood into municipalities, but at the same time he might observe that, as an experienced officer, his honorable friend must be well aware that men capable of intelligently exercising the duties enjoined under the Bill were not very plentiful in the mofussil; and that it was therefore not desirable

that Municipal Commissioners who had just begun to learn their business, as it were, and to prove themselves useful, should be turned out just when their usefulness would be valued. BABOO KRISTODAS PAL would not certainly recommend that they should hold office for life, but he thought it would be advantageous to the Municipality if the term of office were extended to a longer period. He was aware that the Bill gave power to the Lieutenant-Governor to re-appoint those Commissioners who might prove themselves useful; but on this point he was not quite sure whether the Bill would work to the advantage of the municipality. He need not trouble hon'ble members with any remarks as to how the choice of Government in these matters was or would be practically regulated. He believed they were well aware that practically the nomination of Municipal Commissioners rested with the Magistrates, who selected the members and recommended them to the Government for appointment. Now, by this Bill the Magistrate was appointed *ex officio* Chairman of the municipality; and if any member of the municipality should, by his independence, prove obnoxious to the Magistrate as Chairman, he believed it might be taken as morally certain that that Commissioner was not likely to be recommended for re-appointment: so this clause would work to the positive detriment of the Municipal Board and the tax-payers. In fact, the provisions limiting the appointment of Municipal Commissioners to three years, and giving the power to the Government of re-appointment, would together have a tendency to the suppression of independence in the municipal board. He would therefore recommend that where the elective system would be introduced, it should be left as a matter of course to the electors to re-elect any member they liked. But where the Commissioners would be nominated by the Government, he was of opinion that the elective principle might be conceded in so far that the Municipal Commissioners should have the power of re-electing any retiring member they might think fit. In that case the independence of the members would be secured.

Then he observed that whether the Municipal Commissioners were elected by the ratepayers or nominated by the Government, the Magistrate must be *ex officio* Chairman. He thought it would be hardly consistent that where the power of election should be given to the ratepayers, the elected Commissioners should have the right of electing their own Chairman. He must confess that at present the minor Municipalities' Act, which was prepared, he believed, by the hon'ble mover—he meant Act VI of 1868—relating to second class municipalities, was more liberal on this point; for it allowed the Commissioners to elect their own Chairman. Section 36 of Act VI of 1868 said that, subject to the provisions thereinafter contained, every Committee should elect one of its members to be Chairman and another to be Vice-Chairman. Now, if this hon'ble Council thought it proper, and intended to give power to the Commissioners of second class municipalities under Act VI of 1868 to elect their own Chairman and Vice-Chairman, he thought that it would be consistent if they conceded this power also to the first class and second class municipalities under the Bill. He observed that the Vice-Chairman might be elected by the Commissioners; but it was also provided that the Lieutenant-Governor might sanction the

election permanently, or for a term of years, of a salaried Vice-Chairman, and he did not perceive the consistency of that provision. If any unsalaried Vice-Chairman might be elected by the Commissioners, why should not the salaried Vice-Chairman be similarly elected or appointed without reference to the Lieutenant-Governor. This provision was scarcely consistent with the theory of independence, which he believed this Bill contemplated to secure to the Municipal Commissioners.

Then, again, with regard to the removal of the Commissioners, the power given by section 14 appeared most arbitrary. He admitted that this power existed under the present law; but as the present opportunity was taken to amend the law where it was defective, grave defects of this kind ought to be corrected. It provided that the Lieutenant-Governor might from time to time accept the resignation of any Commissioner or member of a Ward Committee appointed or elected under this Act, and might remove any such Commissioner or member of a Ward Committee for corruption or continued neglect to attend the meetings of the Commissioners—it was not mentioned for what period—*or otherwise to discharge his duty* as Commissioner or member of a Ward Committee. He thought that the word 'otherwise' was very indefinite, and the defect under notice should be remedied.

He would now turn to the chapter relating to the application of the municipal fund. Now, the first charge on the fund was the maintenance of the municipal police. He believed hon'ble members were aware that a considerable proportion of the municipal income in the mofussil, particularly in the case of second class municipalities, was appropriated to the payment of the police. This was a standing subject of complaint, and he wished some provision was made to limit the percentage of expenditure for municipal police. If a comparison were made between the sums paid for police and the expenditure for legitimate municipal purposes, he believed it would be found that the bulk of the municipal income in second class municipalities went towards the support of the police. Then he found in section 49 that the Municipal Commissioners, with the sanction of the Lieutenant-Governor, might apply the municipal fund to the construction, repair, and maintenance of roads, wharves, embankments, channels, drains, bridges, and tanks. He did not believe it was intended that that provision of the Bill would be carried out to the letter. But it struck him that, by inserting that clause, some of the obligations which now rested on the provincial and local funds of the Government might be transferred to the municipal fund. Now, as to the construction of embankments, wharves, bridges, or channels, he did not think those were legitimate subjects of expenditure for a local municipal fund. Then clause 3 of the same section was also very comprehensive: it provided for the construction of "other works of public utility calculated to promote the health, comfort, or convenience of the inhabitants." The word 'comfort' might be construed in any way the Municipal Commissioners might like, and thus divert the municipal fund to purposes which were not contemplated by this Bill. Music, for instance, might be considered a subject which came within the meaning of this provision.

Then he noticed that a system of municipal federation was contemplated by section 50, under which a municipality might be allowed to contribute to works executed by a neighbouring municipality on the principle that it would benefit the contributing municipality. Now, if this principle were recognized in the case of the Suburban municipality, all the funds of that municipality might be claimed by the Calcutta municipality. The drainage and water-supply of Calcutta had greatly and sensibly contributed to the sanitary improvement of the suburbs. On the same principle the Port Commissioners might ask the Calcutta municipality to contribute to their fund, because the works executed by the Port Commissioners had greatly tended to the comfort of the inhabitants of the town. He thought a municipality should be considered as a distinct unit, and that all works executed by it should be constructed and maintained from its own fund. In these days of decentralization, he did not understand on what principle such a scheme of municipal federation was justified.

Whilst referring to this chapter, he might refer to section 28, which provided that the Government might make over to a municipality hospitals, dispensaries, schools, rest-houses, markets, tanks, and wells which might be found within the municipality. That meant that the obligation of maintaining such institutions might be thrown upon the municipality. Of course it would be discretionary with the Government and the Commissioners to enter into such an arrangement, but he thought that the provision might be worked to the detriment of municipalities; for it was notorious that the funds of mofussil municipalities were very limited, and it was not therefore just to multiply their obligations. Then he observed that not only were the Commissioners required to maintain their own establishment, but also to maintain the separate establishments for municipal purposes entertained in the offices of the Magistrate and the Commissioner of the division. On that principle the Government of Bengal might as well call upon municipal bodies throughout the country to contribute to the maintenance of the establishment now employed in the Bengal Secretariat for supervising municipal work. The superintendence of municipal administration being a part of the duties of the Magistrate and the Commissioner, it ought to be done by the general establishment of their respective offices, and Baboo Kristodas Pal did not think a separate contribution should be made from the municipal funds. So far as he could judge from the Bill, it appeared that the establishment and police would absorb a considerable portion of municipal income.

Then he came to municipal taxation. The hon'ble member had explained that the Bill did not contemplate an increase of municipal taxation. The tax upon carriages and animals was one to which, on principle, he did not object, as it was a tax upon luxury, and was intended to be imposed upon that class of tax-payers who would be best able to bear it. He thought, however, that it would be but proper and just that this tax should be confined to first class municipalities. It would, he believed, be conceded that there was no room for raising such a tax in second class municipalities. The same remarks would apply to the fee upon the registration of carts. He did not think the hon'ble mover intended that carts in rural towns should be taxed; they were so few and

far between. He had a decided objection to the levy of tolls on roads. It would be perfectly proper to levy tolls on ferries, because they could not be otherwise maintained. It was true that this tax might be imposed at the discretion of the Municipal Commissioners, but he did not think it desirable that such discretion should be given to the Commissioners. As a rule, tolls were not levied now by municipalities, except where ferry funds were applied to the construction of roads. He had received many complaints from persons who had been victims of this system of taxation. He knew a case which had been carried up to the High Court from Howrah. When the Road Cess Bill was before the Council, Mr. Leonard, who was then Secretary to the Government of Bengal in the Public Works Department, wrote an able minute pointing out the objection to tolls on roads, and that was assigned as one of the reasons for the imposition of the road cess. He hoped the hon'ble member would see the propriety of omitting the provisions regarding tolls upon roads. The collection of these tolls caused great annoyance, oppression, and hardship, particularly to the poorer classes, who had no means of getting proper redress.

Then, with regard to municipal regulations, he observed that the hon'ble member had made no distinction between first and second class municipalities. If he would kindly refer to his own Act VI of 1868, he would find that he had therein made considerable distinction with regard to conservancy regulations which ought to apply to second class municipalities covered by that Act.

Then he observed that the Bill authorized the Municipal Commissioners to establish municipal markets. Now, considering that the funds of mofussil municipalities were very limited, he thought a municipal market ought to be the last object to which those funds should be applied. The law gave ample power for the regulation and improvement of existing markets; and if the sanitary improvement of private markets could be secured by means of the proper enforcement of the conservancy regulations laid down in the Bill, he did not think it would be desirable to authorize Municipal Commissioners to apply any portion of their funds to the establishment of markets as a speculation, and for competition with private enterprise. He must say, with all deference, that some of the mofussil Magistrates had very queer notions about markets. He heard the other day that a Magistrate wanted to establish a free market out of the municipal funds, and that the private proprietor of a market would suffer a loss of Rs. 500 a year because the Magistrate insisted upon opening a rival free market. With the extensive powers which this Bill would give to Magistrates, he did not know to what extent municipal funds would be diverted to the injury of proprietors of private markets. He would therefore simply confine the provisions of the Bill in this respect to the regulation and sanitary improvement of private markets.

Then it would appear that under section 204 all the proceedings other than judicial proceedings of the Commissioner or of the Magistrate of the district, except as therein specially provided, should be subject to the control of the Commissioner of the division. Now this provision was not consistent with the theory upon which the Bill had been framed, viz. the propriety of giving the people a full control over the administration of their local affairs by the appoint-

ment of Municipal Commissioners. He readily allowed that there ought to be some restriction imposed upon the discretion of the Municipal Commissioners in laying out large sums of money upon works of permanent utility, but as a rule he thought the Municipal Commissioners ought not to be fettered by the supervising control of the Divisional Commissioners. In the case of the Calcutta Municipality, works involving sums of more than Rs. 50,000 had to be sanctioned by the Lieutenant-Governor; in the same way a money limit should be prescribed in matters of that kind for mofussil municipalities. But he thought the Commissioner of the division should not be allowed to exercise control over all proceedings of municipal corporations.

With regard to the last section to which the hon'ble member had referred, which rendered it compulsory upon the Commissioners to maintain roads constructed by the Road Cess Committee so far as they were within municipal limits, he had simply to observe that the Municipal Commissioners ought to be allowed a voice in the construction of these roads. He admitted that when a district road passed through a municipality, the Commissioners should maintain the line of road passing through it, but at the same time they ought to be consulted before that line of road was laid down.

Lastly, he came to the bye-laws. The power given to the Commissioners to frame bye-laws was really very great. In fact, it comprised no less than fifteen subjects, and some of these referred to police matters which did not properly come within the cognizance of the Commissioners; and the powers given were so wide and comprehensive, that practically if these powers were exercised, the Commissioners would be vested with the functions of this Council in very many matters. He would not, however, dwell upon these provisions in detail, which might be fitly considered in Select Committee.

THE HON'BLE BABOO JUGADANUND MOOKERJEE said he had but a few words to say, and would be very short. He thought there were many points in regard to which the Select Committee would form their own opinion, but there were one or two particular matters which deserved the consideration of the Council. In the first place, he thought that where the Bill provided for a minimum number of Commissioners, it ought to provide also for a maximum number. This suggestion he made for the following reason. At present there were a number of Commissioners who seldom took interest in the general affairs of the municipality to which they belonged; and yet when there was some question in which the interest of some particular officer or officers of the municipality was concerned, then, and then only, did we see the faces of those Commissioners. For this and other reasons he thought that a maximum number of Commissioners should be fixed.

Then, again, he found in section 30 that the Chairman had absolute power in all matters except those which were left to be settled by the Commissioners at a meeting. He should like to see provision made for the appointment of sub-committees for assisting the Chairman in the deliberation of all matters, except those of general importance, which should be discussed at general meetings.

He also objected to that part of the Bill which provided for the retirement of Commissioners at the end of every three years. The new law, under which

the Commissioners were to retain their appointment for three years only, was passed in 1873, and we had already seen the result of it in the suburban municipality. There were some most useful Commissioners who had gone out, and some Commissioners who very seldom took an interest in municipal matters had been retained. It therefore appeared to him that the provision relating to the appointment of Commissioners for a period of three years was a subject deserving the attention of the Select Committee. He thought that the term of office ought to be extended to seven years, and not less.

There were other important matters, which would no doubt be considered in Select Committee. He did not therefore wish to take up the time of the Council, but he generally agreed with the hon'ble member opposite (Baboo Kristodas Pal) in the opinions which he had expressed.

The HON'BLE THE ACTING ADVOCATE-GENERAL had a word or two to say in this matter, with reference to the appointment of Commissioners for three years. He was of opinion that the appointment of Commissioners for three years was in ease of the gentlemen who might be appointed. A man might be perfectly willing to accept an appointment and give up a portion of his time for the space of three years, but he might not be willing to undertake the duties of such an office for a longer period. If any gentleman should take a particular liking to the office, and should make himself useful in that department, there was a power of re-appointment given under the Bill. Objection to the comparatively short period of appointment was made on the ground that, in case a Commissioner should render himself obnoxious to the Magistrate, he would not be likely to be re-appointed. With regard to that the ADVOCATE-GENERAL would remark, as he had on a former occasion pointed out, that in the work of legislation we should not look to extreme cases, but should provide for those which occurred in the ordinary course of things.

He had heard a great many objections made by the hon'ble gentleman opposite (Baboo Kristodas Pal), some of which were certainly deserving of consideration. He entirely agreed with the hon'ble member as to the question of imposing tolls upon roads; he thought that that provision should be expunged from the Bill. The provision would probably lead to the oppression of the poor, and he thought it would be a great pity to retain in the Bill a provision which was really objectionable, and which would go but a very little way in augmenting the funds of municipalities.

The HON'BLE MR. DAMPIER said that he had very little to say in the way of opposition in answer to the remarks of the hon'ble members who had commented upon the Bill. On many points, which the hon'ble member opposite (Baboo Kristodas Pal) had mentioned, MR. DAMPIER much inclined to go with him. But as he had told the Council, he had taken up the Bill which this Council had already passed in 1872 as the model of this one; and the various points on which the hon'ble members had commented were points which had been accepted by the Council in the former Bill, of which no disapproval had been expressed by the Governor-General in refusing his assent to the Bill, and against which he was not aware that any general outcry had been raised. He had therefore accepted them in this Bill, not as originating

from himself, but as having been adopted by the Council on the former occasion, and which were at any rate such as should not be departed from without full consideration of the Council. On one of the points to which the hon'ble member opposite (Baboo Kristodas Pal) had commented, MR. DAMPIER would however express his strong dissent. As long as the administration of these provinces was on the present system, and the Commissioners of divisions were responsible for the administration of their division in every respect—as long as the office of a Bengal Commissioner was such that his division sometimes included a population exceeding that of entire whole administrations outside Bengal—so long, he said, it would not be right to exclude a certain portion of his division from the Commissioner's supervision and control—to create *imperia in imperiis;* and therefore upon that point he must differ entirely from his hon'ble friend. He thought the Commissioner's control over municipalities should be reserved, as much as his control over other officials and official bodies working under him.

As to the grievance which was felt regarding the inclusion of outlying villages in municipalities, he was personally aware that this had been felt, and he should be very glad to suggest that the Select Committee should consider such modifications and restrictions as the hon'ble member had proposed.

Then as to the matter of the three years' tenure of office by Commissioners, he felt the force of the hon'ble gentleman's opposition that it strengthened the hands of the official Magistrate as against the non-official Commissioners. This was a sort of point upon which he should be very glad if hon'ble members should take this opportunity of expressing their opinions as a guide to the Select Committee afterwards.

Then as to the bulk of the income of second class municipalities going to the support of the police, he was quite willing to impose a reasonable limit to the amount or proportion of its income which a second class municipality should pay for police. We had found a limit provided by the former Bill; but from the figures which had been supplied to him in respect of existing municipalities and towns, it appeared that the limit imposed by the Bill was so high as to be practically useless.

Then as to section 50, the objection was taken that one municipality should not contribute towards the works of another. It seemed to him a useful provision. He would take as an illustration the suburbs of Calcutta, which were one municipality, and of the adjoining tracts, which had been formed into another municipality or town under Act VI of 1868. Suppose they were to start a scheme of water-supply, and it was desired to make the head of the water-supply in the suburban municipality. He thought the suburban municipality might well say to the adjoining town—"As soon as we have made our head works, you have only to lay your pipes and take water into your streets: therefore we call upon you to contribute a fair share towards the cost of the head-works, of which you will get the benefit." It seemed to him that to meet such a case the section was a good one; because it might come to this, that if there were no section empowering the two municipalities to share expenses in such cases, both would have to go without some benefit which both desired to have.

The Hon'ble Mr. Dampier.

Then as to the establishment of the Magistrate and Commissioner's offices being paid for out of the municipal funds. Municipal administration, as they hoped, was an improved form of administration, and more to the advantage of the people than the ordinary system, which was sufficient for the rural parts of the country in general. Now, to give to a town this improved administration, a more expensive machinery was required. The immediate effect of creating a number of municipalities was that the Magistrate came up for an establishment for the extra work thrown on his office, and so did the Commissioner of the division, who might require one or two clerks in addition to his establishment. He did not think in any case more than this had been asked for.

The necessity of the additional establishment arose out of the arrangements made for giving improved administration to the municipalities or urban populations; and it appeared to him, under these circumstances, that they should expect to pay for these establishments, and not expect payment of these establishments from the general revenues, which was in effect to throw a portion of the charge on the rural population, which did not benefit by the more advanced form of administration.

As to the tax upon horses and carts being limited to first class municipalities, he was inclined to agree with the hon'ble member.

As to the matter of tolls on roads, the question was one which had been widely discussed. He supposed they all agreed, as a general principle, that turnpike gates should be wiped off the face of the earth. Under certain circumstances, however, it might be that want of money would entail on municipalities, in the earlier stages of their existence, evils even worse than turnpike gates. He should be inclined, therefore, to leave it to the option of Commissioners, who could not raise money enough in other ways, to adopt this plan.

As to bazars and markets, the provisions were taken word for word from the Bill of 1872, and that was another point upon which he thought hon'ble members might take this opportunity of giving the Select Committee the advantage of their individual views.

Again, as to municipal regulations. The hon'ble member opposite had suggested that a distinction should be made between first and second class municipalities. In this also he agreed with the hon'ble member: rather he should say that it should be declared that such and such sections were applicable to each municipality, as had been done in the law of 1868, to which the hon'ble member had referred. It had appeared to MR. DAMPIER that there were certain provisions in the municipal regulations which were rather matters of police, but they were provisions which had been adopted by the Council in the last Bill. It was more easy for the Council now to throw them out than for an individual member to do so.

As to the maximum number of Commissioners, he thought there was something in the objections of the hon'ble member to the right (Baboo Juggadanund Mookerjee); not that he (MR. DAMPIER) feared that there would be any likelihood of having too many Commissioners in mofussil municipalities. Still he should be willing to fix some limit, such as perhaps a number of Commissioners in proportion

to the population of the municipality. He did not think that the Chairman should be assisted by sub-committees, as he did not think that this would work in most mofussil municipalities, though it might do so in the suburbs and other places where there were large numbers of Commissioners. He did not see that the Act would bar the Chairman from calling in the advice of sub-committees, but an express provision might perhaps be introduced making the system of sub-committees optional with the Commissioners in large first class municipalities.

He would repeat that he would be glad if any other members would favour the Council now with an expression of opinion for the guidance and assistance of the Select Committee as regards the general questions of markets, tolls on roads, &c.

The motion was put and agreed to.

The HON'BLE MR. DAMPIER moved that the Select Committee should contain two gentlemen, who had much experience in municipal affairs, and whose services had not been made as much use of in Select Committees of the Council as those of some other gentlemen. He would propose that the Select Committee be composed of the hon'ble Mr. Hogg, the hon'ble Baboo Juggadanund Mookerjee, and the mover.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

Saturday, the 29th May 1875.

Present:

The Hon'ble V. H. SCHALCH, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAUL,
and
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.

ABKAREE REVENUE.

THE HON'BLE MR. DAMPIER said, it might be in the recollection of those members then in Council, that in 1873 Mr. Beaufort introduced two Bills for the amendment of the Excise Law. Both Bills were referred to a Select Committee, and on both the Select Committee had reported; the one was passed by the Council, and the consideration of the other was postponed in accordance with the following recommendation of the Select Committee:—

"The other Bill proposes to amend the Excise Law of Calcutta and of the mofussil in various particulars. It appears to us that such amendments, with certain modifications which

we have made in the Bill, might be introduced with advantage; but these are not matters of pressing importance, and our attention has been drawn to various other matters relating to the law and the system of excise now in force, the consideration of which would involve much time and research. We think, therefore, that the further consideration of this Bill should be postponed until sufficient materials for a complete revision of the law have been collected, and we recommend that it be not passed until the whole law has been reviewed."

Hon'ble members were aware that a review of the system of administration of Abkaree in Bengal had taken place accordingly. Mr. Money's exhaustive Minute, and the correspondence which had passed on it between the Governments of India and Bengal, left no room for doubt as to what was the declared policy of the Government in its Abkaree administration. The papers had been recently published in the *Gazette*. The outcome of that discussion had been that certain amendments were considered necessary in the law,—generally in the direction of strengthening the hands of the executive in preventive and restrictive measures.

Mr. Money prepared a draft Bill, which was printed amongst the documents in the *Gazette*, and which, it would be seen, contained most of the amendments which the Select Committee of this Council had before them and dealt with. But certain other amendments had also been suggested, which MR. DAMPIER proposed to lay before the Select Committee for their consideration. Two only of these were so important as to deserve a few words in this place. It would have been noticed in the correspondence that there was an impression that chemists and druggists, under color of their business, sold liquors, not for medicinal purposes, but for ordinary consumption. He had prepared certain clauses, which he would lay before the Select Committee, for the purpose of placing such sales under restriction. The plan was to compel chemists and druggists to register such sales, making the registers open to inspection. The idea was taken, as Mr. Money said in his Minute, from a draft laid before the Legislature of Massachusets.

The second novelty which had been suggested was that contained in a letter from Mr. McEwen, a Judge of the Small Cause Court at Calcutta, addressed to the Government. This had already attracted some public attention. The principle of the measure which he suggested was that no debt for liquor supplied should be recoverable in court unless the quantity supplied on the occasion amounted at least to the specified minimum value, exception being made in favour of residents in hotels. The result of this measure would be that no sale by the glass on credit would be made except to approved and trusted customers. Mr. McEwen told the Government in his letter that cases for the recovery of such small debts were very frequent in the Small Cause Court, and chiefly against Europeans. The provisions he suggested were taken from the English Statute which was known as the "Tippling Act." MR. DAMPIER had considered the question a good deal, and he must say that, however good the provision might be for the circumstances of England, doubts seemed to gather more and more thickly round the question whether any such provision would be suited to the circumstances of this country. He should ask the President to allow Mr. McEwen's letter to be published in the *Gazette*, and the matter would come before the Select Committee for their consideration.

The Select Committee which reported on this Bill consisted of Mr. Beaufort, Mr. Schalch, Mr. Wyman, Rajah Jotendro Mohun Tagore, and Moulvy Abdool Luteef, out of whom (Mr. Schalch) only remained in the Council. It was necessary, therefore, to reconstitute the Select Committee. He found that the Select Committee had reported; therefore his motion would be that the Bill be recommitted for consideration, and that the Select Committee consist of the following members—the Hon'blo Mr. Schalch, the Hon'ble Mr. Hogg, the Hon'ble Baboo Doorga Churn Law, the Hon'ble Baboo Kristo Das Pal, and the mover, Mr. Dampier, who was now in charge of the Bill.

The motion was agreed to.

CALCUTTA MUNICIPALITY.

The Hon'ble Mr. Hogg moved that the time prescribed for the presentation of the report of the Select Committee on the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be extended for two months, which would extend the time from the 3rd May to the 3rd of July.

The motion was agreed to.

SETTLEMENT OF DISPUTES REGARDING RENT.

The Hon'ble Mr. Dampier moved that the time prescribed for the presentation of the report of the Select Committee on the Bill to provide for enquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances, be extended for two months. One month was allowed to the Committee, and the first thing the Committee did was to invite, by letter, the opinion of such officers as were likely from their experience to be able to give valuable advice. The Bill had also been published, and hon'ble members were aware that it was a subject which was exciting very much attention. It would not be of any use for the Select Committee to begin to consider the Bill until the opinion of the public bodies who might be expected to address the Council, and the reports of the chief officers of the Government, were received. One or two reports had just come in, which were drawn up in a way which showed that officers were taking very great interest in the matter. It would take at least two months before the Committee could present their report to the Council.

The motion was agreed to.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Dampier moved that the time prescribed for the presentation of the report of the Select Committee on the Bill to amend and consolidate the law relating to municipalities be extended for three months. No special time had been named in this case, and therefore, according to practice, one month was assumed to be the time. The month was well over, and there was no prospect of the Select Committee being able to touch the Bill, at any rate for two or three weeks.

Perhaps the Council would allow him to take the opportunity of mentioning what was going on in the working of the Select Committees. The Committee

on the Survey Bill had reported, and the members would have seen the report published in the *Gazette*. The publication of the report might elicit some further remarks for the consideration of the Council. The Irrigation and Canal Navigation Bill, the Select Committee would have been in a position to report upon in a day or two, but they thought it right to postpone their report, as Colonel Haig, the Secretary in the Irrigation Department, was returning to his post in a few days, and it would be better to have the advantage of any suggestions he might wish to make to the Select Committee than to receive them after the report of the Select Committee had been presented to the Council. As soon as Colonel Haig came back, the Committee would report, and the President would be asked to allow the report and the Bill, as amended by the Select Committee, to be published in the *Gazette*. Thus these two Bills (the Survey Bill and the Irrigation Bill) would have been about a month before the public by the first week of July, when he hoped the Council would take them up and deal with them. MR. DAMPIER knew that Mr. Hogg's Committee had also made good progress with the Calcutta Municipal Bill. Of the Agrarian Disputes' Bill he had said that the Committee must wait until they got a certain number of reports which they expected before they could properly deal with it. That was the next Bill he should like to take up in Select Committee. Meanwhile he should ask the Committee to take up this Abkaree Bill, on which he had spoken that day. After that was the Mofussil Municipal Bill; that, he hoped, they should be able to take up in about a month.

He had made these remarks not only for the information of the Council, but he hoped that the public bodies and the officers of Government who were going to favour the Committees with any suggestions would note the programme and endeavour to send in communications in the order he had mentioned, so as to facilitate matters for the Select Committee. He thought the Bills he had mentioned would find occupation for hon'ble members of Select Committees, at the rate of three or four meetings a week, for the next two or three months. Then there would be the Bill for the Partition of Estates, the Registration Bill, and several other Bills which formed part of the year's programme; and as there seemed to be a growing opinion that the holidays were too long, perhaps some hon'ble members would like to employ their leisure time in the holidays in pushing on these Bills. However, there was time enough to arrange what should be the plan of operation after the Municipal Bill should have been dealt with.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

Saturday, the 7th August 1875.

Present:

The Hon'ble V. H. SCHALCH, C.S.I., *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO DOORGA CHURN LAW,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.

SURVEY AND DEMARCATION OF LAND.

THE HON'BLE MR. DAMPIER moved that the report of the Select Committee on the Bill to provide for the survey of land and for the establishment and maintenance of boundary marks, be taken into consideration in order to the settlement of the clauses of the Bill. When this Bill was referred to a Select Committee, the Committee called for opinions and suggestions from those most qualified to give them. They amended the Bill, reported upon it preliminarily, and suggested that their report be published in the *Gazette*. Further suggestions were then received, and after considering them carefully, the Committee had submitted the Bill in this form. Considerable alterations had been needed in the Bill since it went into Committee, and he would now state briefly the scheme of the Bill and the shape in which it now appeared.

The second Part of the Bill provided that the Lieutenant-Governor might order a survey of any tract of land and the demarcation of its boundaries; that he might appoint a Superintendent of Survey and assistants—special officers—if the proceedings to be taken were large enough, otherwise the Collector of the district would perform the functions of the Superintendent of Survey. Section 5 provided that a proclamation should be published, addressed to the occupants of the lands which were about to be surveyed, and of the conterminous lands, and to all persons employed on or connected with the management of, or otherwise interested in the lands, calling upon them to look after their own interests and to give assistance. This was only a general proclamation, and non-compliance with its directions was not attended with any penal consequences: there was no legal obligation to obey the order. But by a subsequent section the Collector was empowered to issue a special notice on any persons interested whose attendance he required, and then such persons would be legally bound to attend and do the things mentioned in section 5 (namely, give all necessary information, point out boundaries, and so on) which were necessary for the prosecution of the survey. Sections 8 to 10, however, distinctly enacted that the materials provided, and the laborers supplied, should be paid for. It had been represented to the Select Committee that one

of the causes of the unpopularity of surveys was that the people were compelled to give their labor and supply petty materials without payment. The Committee hoped that this section would remove that ground of dissatisfaction.

Sections 11 to 13 were intended to obviate the great delay which occurred in these survey proceedings from the unfortunate habit which those interested in the land in this country seemed to have of not taking objections at the time when objections ought to be taken, and when they could most easily be inquired into, and then at the last stage coming forward with some objection which would re-open the whole proceedings. The object of the sections was to enable the Collector, when he had reason to believe that any person had any objections to make, to compel him to come forward with them. The penalty was not summarily to exclude the person from objecting if he did not do so within the time appointed; but if the objections were not brought forward till a subsequent stage, to throw on the objector the expenses of any further inquiry that might be necessary, and this whether his objections were valid or not.

The proviso of section 11 was one which had been introduced at the request of their colleague, the representative of the zemindars, on the ground that very often the local agents of zemindars did not like finally to pledge themselves to accept boundaries on behalf of their absentee principals without sending maps and papers to them for approval. That seemed a natural objection, and in deference to it the Committee provided that when the Collector called upon the local representative of the zemindar to agree to the boundaries laid down, or to state in their objections within fifteen days, the zemindar's agent might either signify his agreement or might say:—"Before giving a formal consent, I must send the maps and papers to my principal in Calcutta; and as a pledge that I am in earnest about it, here, within the time allowed, I deposit the price of making copies of the maps, and I will give the answer of my principal within the time fixed by law."

Part III contained the germ from which this Bill sprung. It enabled the Collector to erect boundary marks and to recover the expense of such erection from the zemindars and tenure-holders. When the Bill was introduced into Council, its history was fully explained and was on the records of the Council, and it was unnecessary for MR. DAMPIER to go into that again. He would only explain the system the Committee had adopted for apportioning the expenses of the boundary marks. In the process of a survey the first thing required was generally temporary boundary marks. The ameen or other survey officer traced out and went over the boundaries first, and put up small mounds of earth or similar marks, which served to guide those who came afterwards. Section 14 provided that these marks should be preserved and kept in order until the permanent marks were erected. But the work was trifling, and would be so much more readily done by persons on the spot than by absent zemindars, that it was thought better to give the Collector power to call upon any occupant, even a cultivating ryot, to look after the temporary marks put up until the survey operations should be concluded and a final award given as to disputed boundaries, or until permanent boundary marks were erected.

Sometimes it was found convenient to put up permanent boundary marks before the survey had passed over the ground; but whether before or after, permanent boundary marks had to be put up, and they consisted generally of pillars, about two feet high, or of rough pieces of unhewn stone: and to look after these was a duty imposed upon the zemindars, farmers, or tenure-holders. It was their duty to protect these boundary marks, to give notice to the Collector if any were removed or injured, or required repairs, if of masonry. Having had these permanent marks put up, the Collector was to recover the expense of erecting them from the parties interested. Under the original Bill, the recovery of expenses was to be made from zemindars only. The Select Committee had included tenure-holders, because it was often the case that the zemindar really knew nothing of his estate, and had very little interest in its local circumstances. For instance in Midnapore, where the survey was now going on, Watson & Co. were putnee-holders of large estates, and the zemindars had but little interest in them, and it would not be fair to throw the whole expense upon the zemindars in such cases. Therefore the Committee had provided for the apportionment of expenses between the zemindars and tenure-holders. The provisions for apportioning those expenses would be mentioned further on.

In section 17 the Committee had followed the Road Cess Act. The Collector was to recover the expense from the zemindars, and the zemindars were empowered to recover from their tenure-holders. But the Council was aware that the country was studded with unregistered lakhiraj holdings, of which the position was not clearly defined. The Government had not recognized them as being free from the general liability for the payment of revenue. In these cases, following the procedure of the Road Cess Act, it was provided that any lakhiraj holding, which was not registered by the Collector, should be considered to be part of the estate within which it was geographically situated; and that if it was not geographically surrounded by the lands of one estate, that the Collector should arbitrarily order that the lakhiraj holding should be included within estate A or estate B for the purposes of the Act. No rights would be affected. It was merely a mechanical contrivance for the purposes of this Act.

There had been some difference of opinion as to whether the Collector should put up the boundary marks by his own men or require the zemindar or tenure-holders to do so. Arguments had been urged on both sides, and the Committee had provided that the Collector should ordinarily put up the boundary marks through the agency of his own men; and then in section 21 they had provided that where the persons concerned preferred it, the Collector might leave it to the zemindar and occupiers of land to put up pillars in the places indicated by the Collector.

He now came to the fourth Part of the Bill, "of apportionment and the recovery of expenses." It had been very strongly pressed upon the attention of the Select Committee, in communications which they received, that this apportionment of expenses was disposed of in the North-Western Provinces' Act and in the Bombay Act by two short sections, of which the summary was that the

Collector was to apportion the expenses at his own discretion. Both the Committee and the mover personally had been strongly urged not to go into the tedious and elaborate details which Part IV now contained. But the system of subinfeudation which prevailed in Bengal, whether it were good or bad, made a marked distinction in this respect between Bengal and Bombay or the North-Western Provinces. There were also other considerations which influenced the Committee; one of which was that the zemindars, the class mainly affected by the Bill, and who were watching its progress most anxiously, would look upon such summary provisions with extreme disfavor. The hon'ble member opposite (Baboo Kristodas Pal) would support that statement. The provisions in the Bill had entailed a good deal of more trouble in drafting than would have been caused if the form of the Bombay and North-Western Provinces' Acts had been adopted. But if the Committee had succeeded in removing some ground of distrust among those affected by the Bill, he thought the trouble taken had been well bestowed.

He would first explain the most elaborate procedure which could be entailed in any case that could occur. The Collector having made up his account of the expense of putting up the boundary marks in any convenient tract, would first proceed to apportion those expenses between the different estates concerned without regard to the tenures which they contained. This he would do upon a general consideration of the number of boundary pillars put up on the boundaries of each estate. Having apportioned the amount accordingly, he would issue a notice to the zemindars, telling each of them how much of the expense had been thus provisionally apportioned to him. Then came the section which gave the fullest opportunity of objecting to the zemindar. If any zemindar objected, the Collector must listen to him before he passed the final order of apportionment.

The apportionment on the estate having been finally made, the zemindar might then give in a list of the tenures on his estate and ask the Collector to apportion, say the Rs. 1,000 which had been allotted as the share to be paid by his estate, between him and his tenure-holders. Then the Collector would make a provisional apportionment in accordance with the zemindar's statement, and serve notices upon the tenure-holders concerned, and any one might make objections before the Collector passed the final order. If no objections were preferred, or when they were decided, the Collector would make the final apportionment between the zemindar and the tenure-holders.

This was the most elaborate and lengthy process that any case could go through; and it was lengthy enough there was no doubt. It would meet the case of a captious zemindar, of a Collector who unfortunately had not the confidence of the people with whom he was dealing, and cases of really intricate and difficult apportionment, if any such should arise. But the Committee hoped, from the experience of the Embankment Act, that not in one case out of twenty would these proceedings be required. The apportionment of expenses between the estates was a mere matter of calculation when you knew the number of boundary pillars put up on each estate. Therefore the Committee believed that not in one case out of twenty, or even fifty, would the zemindar

object to the apportionment made by the Collector. Assuming this, the Committee had endeavoured to shorten the general procedure with regard to dividing the expenses between the zemindar and his tenure-holders. They found that the Collector had in his office a mass of information regarding under-tenures which had been collected in connection with the Road Cess Act and other matters. Therefore they had provided that simultaneously with the Collector's first provisional apportionment of the expenses on the zemindars of the different estates, he should, whenever he had sufficient information to do so, also issue a summary provisional apportionment of the amount apportioned to the estate between the zemindar of the particular estate and his tenure-holders. The Committee were assured by local officers, who had experience of these things, that in a great majority of cases this summary apportionment of expenses would end the proceedings; neither the zemindar nor the tenure-holders would have any objection to make. In short, then, having provided all that the most distrusting zemindars would require as a protection for themselves, the Committee believed that in nine cases out of ten the distribution of expenses would be settled as summarily as under the Bombay or North-Western Provinces' Acts.

When the apportionments were finally concluded, the Collector would issue a notice—if the zemindars wished him to do so, and deposited the cost—requiring the tenure-holders to pay the amounts due to the zemindar; the zemindar having the same power of recovering as for the recovery of arrears of rent.

Section 39 was a provision of the old Bill, declaring that the money which had been advanced for putting up the boundary pillars by the Government since November last was to be recovered under this law. The money was advanced by the Government of India for the erection of boundary pillars in Midnapore and in the Ganges Dearahs on this understanding.

In Part V the Committee had dealt with boundary disputes. In the original Bill it was proposed to give survey officers the same powers as were given to officers making settlements by Regulation VII of 1822; but those provisions had been so overlaid by subsequent legislation, that the Committee had thought it better not to refer to Regulation VII of 1822, but distinctly to lay down the powers which survey officers should exercise. The ordinary rule was that when a case occurred of a boundary dispute, the survey officer should decide it on the ground of possession: that was the present practice, and that decision, according to possession, would have the effect of a declaratory decree of a Civil Court until it was upset by the Civil Court itself. In section 44 there was another provision, which was to facilitate executive working. When a survey officer came across a boundary which he found was laid down some time ago either by a competent court or a settlement officer, but found that possession was not in accordance with the boundary as so laid down, he might relay that boundary and show in his map its relative position to the boundary which actually existed according to possession. This would have no effect on possession; but was merely to facilitate matters in any future suit or inquiry, by recording the position of the boundary as previously laid

down while the professional and competent officers were on the spot, rather than leave it to be done by a Civil Court Ameen at a future time. It was merely a local inquiry to assist the future judicial decisions. MR. DAMPIER thought that such a provision would be useful and good: it would help the person who had been wrongfully dispossessed, and would simplify matters if he chose to go to the Civil Court to recover the land of which he had been dispossessed. It would be well understood that relaying the old boundary did not affect the right to possession in any kind of way. It was merely a local inquiry by the survey officer instead of by means of the Civil Court Ameen.

Then came the miscellaneous provisions, with regard to which there was not much to notice. Section 51 provided a daily fine, which was already imposed under the existing law, for delay in supplying information and papers. Section 57 provided that every amount due to the Collector under the Act in respect of any expenses incurred should be deemed to be a demand under Bengal Act VII of 1868. Then followed the appeal and control sections. The Committee had provided that there should be no right of appeal, except in special cases which were detailed in sections 59 and 60, but that the higher revenue authorities had a power of control and supervision over all proceedings. The last section provided that the Lieutenant-Governor might lay down rules generally to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken under the Act.

The motion was agreed to.

On the motion of Mr. Dampier the clauses of the Bill were considered in the form recommended by the Select Committee.

Sections 3 to 8 were agreed to.

Section 9 was agreed to, with a verbal amendment.

Section 10 was agreed to.

The HON'BLE MR. DAMPIER said, before the Council proceeded to the consideration of section 11, he proposed to introduce two new sections, 10*a* and 10*b*. As he had explained before, sections 11, 12, and 13, were intended to prevent delay, and to compel the parties interested to make their objections before the Collector within a reasonable time; but it had been brought to his notice by the Superintendent of Survey at Midnapore that great difficulty had often been felt on the spot before the papers got to the Collector. People pointed out the boundaries, the ameen laid them down in his maps and field-books, and then, when he called upon those who pointed them out to sign the papers, they were *non inventi*: they neither came, nor signed, nor objected. The Ameen sent in his papers, and two or three months afterwards the people who were on the spot, and who might have stated their objections then, made them before the Collector. The Superintendent of Survey had urged MR. DAMPIER to introduce sections such as these, by which the people who pointed out the boundaries should be required either to sign the papers before they were sent to the Collector, or else to state their objections and their reasons for them. The penalty for not doing so was not that the party was precluded from making objections, but that if he did not do so at the time which was most convenient,

he must bear the cost of any future inquiry. The sections which MR. DAMPIER proposed were as follows:—

"10*a*. When the demarcation of a village or other convenient tract has been completed, the ameen or other survey officer shall, before sending in to the Collector the maps and papers relating thereto, call upon the persons who have pointed out the boundaries on behalf of those interested to inspect the maps, field-books, and similar papers in which any boundary pointed out by any such person has been represented, and by signing such maps and papers to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them.

Any person so called upon, who may object to sign the maps and papers as aforesaid, shall be required to state his objections in writing, and such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

10*b*. Whenever any person, being required by the survey officer to sign any maps or papers, or to give in a written statement of objections as provided in the last preceding section, shall fail so to sign, and shall give in such statement of objections before the papers are sent in by the survey officer to the Collector;

and whenever any such person, having both failed to sign and to give in such written statement, shall subsequently prefer any such objection:

the Collector may cause to be made such further inquiry, and shall pass such order thereon, as he shall think fit.

Provided that if such objection is preferred for the first time to the Collector, and not made in writing to the survey officer before the papers were sent in to the Collector, as required by the last preceding section, the Collector shall make such further inquiry at the expense of the person so objecting; and if the objection shall seem to the Collector not to be well founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry, and of any necessary expenses incurred by any other person on account of such inquiry"

The HON'BLE BABOO KRISTODAS PAL said he did not object to these sections, but it struck him that if they were carried without modification, they would practically override section 11, in which provision had been made to furnish copies of maps and other papers to the zemindar or his representative, if his representative did not agree to sign the maps before they were sent to the Collector. Section 11 was discretionary, and if the proposed sections 10*a* and 10*b* were introduced as now framed, practically the discretion vested in the Collector by that section would not be exercised, and the concession made by the Select Committee, to which his hon'ble friend had referred, would therefore be practically nullified. He would ask the hon'ble member to consider whether some modification might not be made in these two sections so as to preserve the principle recognized in the proviso in section 11. If that point were conceded, he had nothing to say against the amendment.

The HON'BLE MR. DAMPIER said he was not prepared at that moment to say off-hand how the alteration suggested by his hon'ble friend could be made; but if the hon'ble member would be good enough, as MR. DAMPIER did not propose to ask the Council to pass the Bill at that sitting, to prepare such an amendment as would meet his wishes, he thought they would be able to come to an agreement upon the point.

The further consideration of the proposed sections 10*a* and 10*b* was then postponed.

Sections 11 to 57 were agreed to.

Section 58 having been read—

The HON'BLE MR. DAMPIER said the general provision was that the Commissioner of the division heard appeals, and he had also a power of general control and supervision over the proceedings of the Superintendent of Survey and his subordinates. That had been found to be sometimes inconvenient. In fact it had been the universal practice, throughout the survey of Bengal which had taken place, not to give the Commissioner this power of control and supervision, but simply to give him the judicial power of hearing appeals, and to leave the power of supervision and control to the Board of Revenue. The object of the proviso which MR. DAMPIER proposed was to enable the Government to eliminate the Commissioner out of the chain of authorities, and to let the Board of Revenue have a control direct where the proceedings were large enough, and where it was found necessary to do so. He therefore moved that the following proviso be added to section 58:—

"Provided that the Government may order that in the course of any survey under this Act, the functions of the Commissioner shall be restricted to the decision of appeals under Section sixty, and that the general powers of control and supervision over the Superintendent of Survey or Collector and their subordinate officers may be exercised by the Board of Revenue directly."

The motion was carried, and the section as amended was agreed to.

Sections 59 to 63 were agreed to.

The further consideration of the Bill was then postponed.

AMENDMENT OF THE ABKAREE ACTS.

THE HON'BLE MR. DAMPIER moved that the report of the Select Committee on the Bill to amend Act XI of 1849, Act XXI of 1856, and Act IV of 1866 (B.C.), be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee; and in so moving he would remind the Council that the Bill was referred to a Select Committee in 1873; it was then brought before the Council, and by general consent its consideration was postponed to give the Government an opportunity of looking thoroughly into the excise administration of Bengal, and of adopting such measures as might be considered advisable to improve it. Hon'ble members had seen the interesting correspondence which had taken place on the subject, the memorials which had been presented, the minute of Mr. Money, the conclusions of the Lieutenant-Governor and those of His Excellency the Governor-General in Council. These conclusions were referred to the Select Committee, and in proceeding to deal with them he found that the Committee, as originally constituted, had dwindled away almost to nothing. Therefore a few weeks ago he proposed that certain members be added to the Select Committee, and the Committee so reconstituted had given full consideration to the correspondence which had been recorded in the matter. The Bill was practically divided into four Parts. The Part numbered two contained amendments of the Calcutta Abkaree Act; the next Part contained amendments of the Mofussil

Abkareo Act; the third Part contained a correction of an erroneous wording in the Calcutta Police Act; and the fourth Part contained general provisions which were common to Calcutta and the mofussil, or to Calcutta and a part of the mofussil, *i.e.* to Calcutta, the Suburbs, and Howrah.

In the amendment of the Calcutta Act, the object of the new sections 4, 8, and 16, was to make the manufacture of spirituous and fermented liquors in Calcutta illegal without a license. Apparently, by an oversight in the old Act, the manufacture of spirituous and fermented liquors was not restricted by the necessity of obtaining a license. These new sections therefore made such manufacture without a license illegal, and gave the same powers for detecting illicit manufacture, and so on, as the abkaree officers and the police possessed under the old law in cases of illicit possession and sale.

The amended section 19 was simply to give police officers the same powers of detention and arrest as the old Act gave to the abkaree officers for the detention and arrest of people who held possession of contraband liquors and drugs.

The amended section 20 contained an important addition which would strengthen the hands of the executive. Under the old law, even under a warrant from the Collector, the abkaree officer could only enter a house, in cases of suspected illicit possession or sale, between sunrise and sunset. Of course their efforts were often frustrated by not being in a position to enter at night. The amended section empowered the Collector to cause a search to be made at night as well as in the day.

Sections 33 and 34, as amended, were not of very great importance; they were merely to facilitate the working of the law in a matter which had caused some difficulty. The law now provided that the Magistrate who decided a case of illegal possession or sale should direct the amount of the fine levied and the value of the article seized to be divided between the informer and the captor in equal proportions. Evidently that might, on occasions, prove inconvenient. A case was before the Board of Revenue at the present time where the Magistrate had awarded the whole to one and the same person, whom he considered to be both the informer and the seizer, and the legality of his decision had been questioned. The existing section contained a compulsory provision that the whole value of the thing seized and the fine should be given away by the Magistrate, and that nothing should go to the Government; the whole must be given to those who were instrumental in causing the seizure. That compulsory provision had been retained. But it had been found in practice that one of the essentials to make rewards effectual was to give them promptly, and not to keep the informer and seizer waiting until the prosecution was concluded and the fine levied; therefore the new section provided that the Collector might give any reward he liked immediately upon the capture being made, and that any amount so awarded should be deducted from the amount which was subsequently awarded by the Magistrate.

Section 4 of the Bill was new. Under the old Act the Collector might, under his warrant to an abkaree officer, cause him to search a house. Section 4 gave precisely the same powers to the Commissioner of Police, to be

exercised by warrant addressed to his own police officers. This would of course strengthen the hands of the executive to a great extent.

Then he came to the amendment of Act XXI of 1856. The amended section 33 was to give the Board of Revenue power to subject drugs, when cultivated, to such restrictions and supervision as might be necessary. The powers given by the present Act were not sufficiently stringent; the wording of the law limited the powers in such a way that control could not be sufficiently exercised by the Board.

Section 50, as amended, merely contained a verbal alteration of the present section necessitated by the substantive alteration in section 33, to which he had already referred.

The amended section 74 was one which would not be overlooked. Under the present Abkaree Act those who committed certain offences could be imprisoned in the civil jail only. But some of these offences were of a nature which deserved imprisonment in the criminal jail; and therefore it was proposed, in the case of such offences, to give the option of imprisoning either in the civil or in the criminal jail.

The amended sections 75 and 76 made corresponding alterations to those which he had mentioned in connection with the Calcutta Act in regard to the distribution and levy of fines and rewards.

Part IV was an amendment of the Calcutta Police Act IV of 1866 (B.C.); it was merely to correct a verbal inaccuracy. Section 40 of that Act spoke of certain conditions in a license granted under a certain section. It so happened that the particular section specified did not provide for the grant of licenses at all, and the amendment was merely to put the wording of the section right.

Then came general provisions common to Calcutta and the mofussil, or part of it. Section 10 of the Bill was new, and provided that it should not be lawful for any person to cultivate plants from which intoxicating drugs were produced without a license. At present there was no law under which the revenue authorities could prevent any ryot from cultivating what he chose to call drugs for his own consumption. It was obvious that any attempt to restrict the illicit sale of drugs whilst this liberty was in force was futile. As soon, for instance, as the cost of ganja was found to be inconveniently high, every ryot in certain districts would grow a sort of bastard ganja as if for his own consumption, but really for clandestine sale. But under these sections the Collector would be able to supervise such growth, and if a man wanted to cultivate an intoxicating drug he must get a license to do so.

Section 11 merely applied to cases under the Act the measure of imprisonment which the Penal Code applied generally in default of payment of fine. It provided that a certain amount of fine should be commutable to a certain amount of imprisonment.

There was not much to add to what was already before the Council with regard to the provisions contained in section 12 of the Bill. They were taken from the Tippling Act in England, and had been suggested by Mr. MacEwen, a Judge of the Small Cause Court, who was good enough to attend a meeting

of the Select Committee. He showed that there were many suits brought in the Small Cause Court, mostly against Europeans, for comparatively long scores run up for drinks; sometimes five or six drinks in the course of the day. Every time some men passed the drinking-shop they seemed to take a drink. The Committee had taken some pains to ascertain what the effect of this section would be, and the general feeling was that it would impose some sort of check, and that many of these drinks would be abstained from if it were necessary to pay for them down on the spot. Different opinions were held on the point, and there was a good deal to be said on the other side. The principal objection seemed to be that Europeans in this country did not carry about money with them, and some inconvenience might arise from that fact. But the Act had been in existence in England for years, and had worked satisfactorily, and those who had given attention to the subject in this country thought that the good it would do would outweigh the small inconvenience it might sometimes cause. The balance of opinion was in favour of this provision.

Section 13 of the Bill provided that there should be no pawning of articles for the payment of liquor.

The Select Committee had adopted almost all the conclusions which the Government had arrived at in the correspondence which had taken place; but they had not thought it necessary to adopt the recommendation made by Mr. Money, that the wholesale trade in Calcutta should be subjected to license. It was true that in the mofussil it was necessary to take out a license for the sale of liquors wholesale, but the license fee was trifling, only Rs. 16 a year. In the North-Western Provinces and in Oudh, as had been stated to the Council by Mr. Beaufort, these wholesale licenses were known, and were in force; and so far it was an anomaly that a license should not be required to cover wholesale dealings in Calcutta, while it was levied in the interior. But MR. DAMPIER had communicated with the Madras and Bombay authorities, and he found that in those presidency towns no licenses were required for wholesale; and therefore, on the whole, it was thought better that the Calcutta practice should be uniform with that of the other sea-ports and importing presidency towns, rather than that it should be uniform with that of the interior and of the inland provinces.

There was one other point on which the Select Committee had not adopted the suggestions which were made by Mr. Money, namely, on the question of dispensaries. A good deal had been said about this matter; it had attracted much attention, and a petition had been presented to the Lieutenant-Governor which had been handed on to MR. DAMPIER, and from which he would read an extract:

"That your memorialists need not repeat the reasons which suggest the necessity of some provisions of the kind introduced in the draft Bill [referring to the draft Bill which Mr. Money drew up]. The Select Committee argue that the existing law (Act XI of 1849) is sufficiently stringent to meet the evil complained of; but whatever the case may be theoretically, it is notorious that practically it has entirely failed. For more than a quarter of a century that law has been in operation, but the evil under notice, far from being checked, is flourishing in full luxuriance. The executive authorities have not evidently considered the dispensaries to come under it, from the simple fact that prosecutions have been almost *nil*.

The Hon'ble Mr. Dampier.

It is observeable that possibly the Legislature, in enacting Act XI of 1849, had not then this evil in view, inasmuch as it had not then assumed such a formidable magnitude."

And then the memorialists urged the Lieutenant-Governor to cause sections to be introduced,—

"That even if it be supposed that the existing law covers dispensaries, your memorialists beg to submit that it does not provide what quantity of liquor may be stored in a dispensary for *bonâ fide* medicinal purposes; that, when it is sold, it should be sold upon a duly authenticated medical prescription; that a register of such sales should be kept; that such register should be open to inspection by authorized officers; that liquor passed clandestinely as medicine with a false label, as is now the practice, would be considered an unlicensed sale. If these regulations and restrictions were imposed by law, the duties of the executive officers and the Magistrates would be well defined: there would be no pretext for either evading or ignoring the law, and the temptation to, or opportunity of, drinking would be minimised for those who supply themselves with liquor under a cloak, who are restrained by a wholesome feeling of self-respect to resort to liquor-shops or open accounts with them."

It seemed to have been assumed, in some of the comments which had appeared, that the Select Committee had treated this matter rather cavalierly; that they had not paid sufficient attention to it. His hon'ble colleagues on the Committee knew well that this was a mistake; that the Committee considered the practicability of introducing restrictive provisions in the sense desired at two meetings; and that on the whole the majority of the Committee did not think anything that could be devised would impose a practical check. It was agreed, however, that the matter should be brought before the Council by one of the minority, and instead of passing it over and paying no attention to it, the Committee had drawn up the best sections which they thought could be drawn. The majority of the Committee thought that even those sections would not be of any practical use. The introduction of those sections would be proposed, as would be seen from the notice of amendment given by the hon'ble member opposite (Baboo Doorga Churn Law). MR. DAMPIER would reserve his remarks as to the present state of the law, and the view the Committee took until the hon'ble gentleman proposed his amendment.

The motion was then agreed to.

Sections 3 to 10 were agreed to.

The HON'BLE BABOO DOORGA CHURN LAW said, before the Council proceeded to the consideration of the next section, he would make a few remarks. The native community, who were alarmed at the spread of drunkenness, and were anxious for its suppression, seemed to be disappointed at the absence of any provision in the amended Bill for the prevention of clandestine sales of spirituous liquors by chemists and druggists. That some of those people did sell spirituous liquors, was an undoubted fact, and they did so with perfect impunity under cover of their profession. He admitted that the law, as it at present stood, provided for the punishment of these persons if detected, but there was nothing in it which afforded facilities for detection. He did not say that the proposed system of registry would afford a complete check against such clandestine sales; but he thought the introduction of these provisions in the Bill would operate as a wholesome check on the vendors, and the inspection from time to time by police and abkaree officers would open up oppor-

tunities for detection which were entirely absent at present. Under these circumstances he proposed that the following sections relating to the sale of spirituous liquors by druggists and chemists, which were rejected by the majority of the Select Committee, be inserted in the Bill after section 10 :—

"10*a*. Notwithstanding anything in this or any other Act contained, chemists, druggists, and apothecaries, not being licensed vendors, may sell spirituous and fermented liquors and intoxicating drugs for *bonâ fide* medicinal purposes only ;

Chemists, &c., may sell without license for medicinal purposes only.

provided that no such chemist, druggist, or apothecary, shall sell such liquors or drugs unless they have been mixed with other ingredients as a medicine, except upon the prescription of a medical officer holding a degree not below that of a licentiate of medicine ;

and every sale made by a chemist, druggist, or apothecary otherwise than as in this section provided, shall be deemed to be an illegal sale, and the person making such sale shall be liable to all the penalties prescribed for making an illegal sale by the laws in force.

10*b*. Every such chemist, druggist, and apothecary, shall keep a register in such form as the Board of Revenue may prescribe, in which he shall enter the date and quantity of every sale of such liquors or drugs which have not been mixed with other ingredients as a medicine, and the prescription given in respect thereof, and the name and residence of the purchaser, which register shall at all times be open to the inspection of the Collector, or any excise officer above the rank of jemadar, who may be deputed by the Collector for the purpose of such inspection, or of any other person duly authorized in that behalf.

Register of sales to be kept.

10*c*. Every such chemist, druggist, and apothecary, who shall neglect to keep such register, or to enter the required particulars regarding any such sale made by him ;

Penalty for not keeping register.

or who shall make an incorrect entry thereof ;

or who shall refuse on demand to produce such register for the inspection of the Collector, or other officer duly authorized to inspect it,

shall, for every such offence, be liable to a fine of two hundred rupees "

The Hon'ble Mr. Reynolds said he fully sympathized with the hon'ble member in the motives which had actuated him in proposing this amendment ; and if he believed the amendment calculated to effect the end for which it had been proposed, it would have no more cordial advocate than himself.

They had been told, by those who might be supposed to be well informed on the subject, that the practice of drinking was spreading among the upper classes in Bengal. That intemperance should prevail among any class of the people must be admitted to be a national calamity ; and the evil was intensified when those who yielded to the vice belonged to the higher and educated classes, to whom others naturally looked up for example and guidance. It was said that in England intemperance was the national besetting vice, but he trusted, it might be observed, that it was gradually becoming confined to the lower classes. A hundred years ago an English gentleman would have felt it no disgrace to get drunk, whereas now there was scarcely one of the upper or middle classes who would not feel it to be a degradation ; and among the more respectable even of the lower classes, the same influence was making itself felt. But the condition of Bengal was very different from this. The great mass of the people were remarkably temperate, and he trusted that they might always remain so ; but there were grounds for fearing that a habit of indulgence of drink was extending among the h igher classes, and this must naturally give

rise to serious apprehensions that the evil would spread from the educated few to the uneducated many. Any rule or law which would tend to check this most deplorable tendency deserved the cordial support of any one who had the interests of this country at heart.

Nevertheless he was unable to accept the amendment of the hon'ble member. In the first place, it seemed to him that the amendment came in the wrong place. It was an old legislative maxim that the legal remedy should not go beyond the evil which it was intended to remove. Now, he believed that it would be admitted that this evil—the sale of spirituous liquors at dispensaries under the guise of medicine—prevailed only in Calcutta, or at most only in Calcutta and in three or four large towns in the interior. The amendment should, therefore, have been introduced in the Part of the Bill which related to Calcutta, and not among the general provisions of the Bill.

Passing to the words themselves of the amendment, he observed that it was provided that no chemist should sell spirituous liquors unless they had been mixed with other ingredients as a medicine: but was the hon'ble member prepared to say what constituted a medicine? There was a mixture of which some of them had doubtless occasionally partaken, made by mixing a wine glass full of brandy or whisky with hot water, sugar, and lemon. That was a spirituous liquor mixed with other ingredients, and it was impossible to deny that it might be taken as a medicine, and that, under some circumstances, it might be a useful and valuable medicine. The amendment of the hon'ble member would legalise the sale by a chemist of such a mixture as this without any restrictions.

The amendment went on to provide that liquors, even when not mixed with other ingredients, might be sold on the prescription of a medical officer holding a degree not below that of a Licentiate of Medicine. In England such a provision as this would be logical and intelligible; for in England there was a medical body duly recognized by the law, and enjoying a complete monopoly of medical practice. No one was allowed to practice medicine in England unless he possessed a qualifying certificate from the College of Surgeons, or the Society of Apothecaries, or I think from one or two other bodies; but we had no such recognized body of medical practitioners in Bengal. The status of a Licentiate of Medicine was, he believed, entirely unknown to the law, and he thought this Council should pause before agreeing to recognize it in the manner proposed by this amendment.

The next clause declared that every sale made by a chemist, otherwise than as in this section provided, should be deemed to be an illegal sale. He ventured to think that the hon'ble member had not fully considered the effect of enacting a law in such words as these. It appeared to him that the result would be that Messrs. Bathgate & Co. would render themselves liable to a fine of Rs. 500 every time they sold a bottle of eau-de-cologne.

He was aware that it might be said that in such matters we ought to assume that people were possessed of ordinary common sense, and that complaints such as he had suggested would never be made, or, if made, would not be entertained by the Magistrate. But in legislation we had no right to

assume anything of the kind. There was nothing more dangerous than to enact a law in wide and general terms, and to trust that it would only be put in force in a cautious and guarded manner. An instance which occurred the other day in England was a note-worthy example of this. There was an old Statute of George II which was originally intended to check seditious and treasonable meetings. It had long been obsolete, but had never formally been repealed. This statute was brought forward and put in force for the purpose of compelling the proprietors of the Brighton Aquarium to close that institution on a Sunday. Nothing could have been further from the object of the original Act; but it was impossible to deny that the complaint came within the wording of the Statute.

The Judge before whom the case was brought said that he would gladly have found a loophole in the law which would have enabled him to dismiss the complaint, but he was unable to do so, and he was compelled to convict and fine the defendants. This case showed the extreme danger of couching enactments in general language, which included indeed what it was desired to prohibit, but included also a number of other things which were perfectly harmless and unobjectionable.

For these reasons he was unable to support the amendment of the hon'ble member, and he must express a hope that it would not be assented to by this Council.

The Hon'ble Mr. Hogg said he entirely agreed in the remarks of the hon'ble member who had just addressed the Council. Mr. Hogg submitted that the section as drafted, instead of placing a check on the sale of liquor, had precisely the opposite effect, namely, licensing the sale of liquor; whereas now it was absolutely illegal for a chemist or druggist to sell any liquor. That was the ground upon which he opposed these sections in the Select Committee, and that was the ground upon which he opposed them now.

The Hon'ble Mr. Dampier might begin by saying that when the memorial which he held in his hand was handed over to him by the Lieutenant-Governor, it was accompanied by an intimation that His Honor thought that more stringent measures were necessary to suppress the sale of liquors in medicine shops. Mr. Dampier agreed entirely that more restrictive measures, if practically effectual measures could be devised, were desirable. In this belief the Select Committee approached the subject, and in looking into it they found that in the opinion of the majority nothing practical could be devised which would be more efficient than the preventive provisions of the existing law. He would lay those provisions before the Council.

The Calcutta Act in section 4 provided that any retail sale of spirituous or fermented liquors without a license was illegal, and provided a penalty of Rs. 500. Section 15 provided that any person not being a licensed dealer having a greater quantity than that specified in section 5 in his possession was to be fined Rs. 500. To that there was an exception, "except in the case of English and Foreign spirits and beer." That touched the present case. Under section 16 such articles were liable to confiscation, and under section 20 any house in which it was supposed that such articles were kept might be searched

from sunrise to sunset according to the present law; but under this Bill the power of search and seizure would be further extended to any time, whether in the night or day.

In the mofussil, Act XXI of 1856, section 28 provided that there should be no manufacture or sale of spirituous or fermented liquors except under the Act; section 48 provided a penalty of Rs. 500 for illegal manufacture or sale; section 49 provided for the confiscation of any such liquor or drug which any person might possess, except English and Foreign wines and beer purchased for private use and not for sale, and for the imposition of a penalty on conviction; section 58 provided that a house might be entered and searched if suspected of containing illicit liquors or drugs between sunrise and sunset extended by this Bill to any time either day or night; and section 59 gave police and customs officers all such powers of search and detention.

So that as the law stood, chemists and druggists, both in Calcutta and the mofussil, were precisely in the same position as any other individual as regards the possession and sale of spirituous or fermented liquors: that was to say, that under a strict interpretation of the law they could not sell any spirits or spirituous liquors without incurring a penalty, and they could not possess above a certain quantity of country-made liquor and drugs, but they might have an unlimited quantity of imported spirits or beer on their own premises, just as a private individual might have. The question was, were the Council prepared to restrict the personal rights of those persons who carried on the trade of chemists and druggists within closer limits than the rights of any private individual? Were they prepared to enact that those who had chemists and druggists shops below, and lived with their families above, should not enjoy the same right as any other private individual enjoyed of keeping spirituous or fermented liquors in their houses? And MR. DAMPIER did not think the Council would be prepared to pass such a measure as that. One thing had occurred to him, that where a dispensary was not used also as a private dwelling, the Council might summarily impose the maximum of imported spirits which should be kept on the premises at one time. He had made inquiries, and he believed that one bottle of brandy would be sufficient for the business purposes of a dispensary. Now, if the Council were to pass any restrictive measure, it seemed to him that they should go much farther than the amendment of the hon'ble member; and where premises were used as a dispensary apart from a private dwelling-house, they might impose such a maximum. But where the dwelling-house of the chemist was on the same premises as the dispensary, it was evident that a man who wished to evade the law would keep the stores of liquor in his private apartments or in his bed-room, and when necessary he would produce a bottle to the customer. With all the willingness in the world to provide something that would check the illicit sale of liquors at dispensaries, MR. DAMPIER had not been able to devise any reasonable measures that would in his opinion further the object in view. The Council would see that the Government only desired to have some measure suggested which should provide an effectual check on such illicit sales; and if any one could suggest a measure which would be useful for the purpose, and

not trench too far on the rights of the public in general, who happened to deal in drugs and medicine, he should be the first to support it.

As for the amendments before the Council, he had said that they had been considered in Select Committee. Every one of the difficulties pointed out by the hon'ble member on his right (Mr. Reynolds) had been fully considered. What was a medicine? Who were authorities competent to give prescriptions, and the like? But the Committee had not been able to devise any provisions which should be less defective and less open to objection. They believed the only effect of introducing these provisions would be to create a kind of satisfaction that in deference to the public wish something on the subject had been introduced into the Bill.

As to one point which the memorial urged, that the executive had not considered that the provisions of the present law applied to dispensaries, if there was any one present who was responsible for that reading of the law by the executive in Calcutta, perhaps he would explain whether they entertained such views, and if so, the grounds on which they were based. It seemed to MR. DAMPIER that the executive had enormous legal powers for the suppression of the illicit sale of liquors by chemists and druggists if they chose to exercise those powers; and it was only in consequence of their powers being exercised with a reasonable discretion in allowing dispensaries to sell liquor really for medicinal purposes, that it was possible for chemists and druggists to carry on their trade at all. He believed that an hon'ble member had some amendment on the anvil restricting the amount of spirituous liquors to be kept in a dispensary at one time, in cases where the person keeping the shop did not reside on the premises. MR. DAMPIER doubted whether anything effective could be devised even in that direction. Something must be allowed to be kept on the premises; and even two bottles would provide sufficient for a drinking bout of a few friends, such as, it was said, were held in dispensaries after the licensed liquor-shops were closed; and even two bottles would fill many phials labelled "medicine." Still, if his hon'ble friend would propose something to that effect, the Council might be able to adopt it. As to any interference of that kind with chemists who lived on the premises on which they kept their shops, he could not agree. He could not agree to any thing which would restrict their rights because they happened to have druggists' shops below the premises in which they resided. He would oppose the amendments proposed, simply on the ground that they were impotent to effect the object desired. It seemed to him that the real way to meet the evil was to make a strong executive movement—a sort of revival in this direction.

The HON'BLE BABOO KRISTODAS PAL said, whatever difference of opinion existed as to the detailed provisions which had been moved by way of amendment, it seemed to be the unanimous opinion in the Council and out of it that the evil complained of did exist. That opinion was first pointed out in some of the memorials to Government; it was admitted in Mr. Money's Minute; it was admitted in the Resolution of the Government, and in its letter to the Board of Revenue; and it was admitted in the letter of the Government of India to the Government of Bengal. Thus there was a consensus of opinion

in regard to the existence of the evil complained of. The hon'ble member in charge of the Bill was perfectly justified in stating that this question was fully considered in Select Committee, and that the difficulty was how to make a practical provision for meeting the evil. BABOO KRISTODAS PAL admitted the difficulty, and he was not himself quite satisfied that the provisions prepared by the hon'ble mover of the Bill, and since adopted by the mover of the amendment before the Council, would go to the extent desired in checking the evil. But he felt satisfied that if those provisions would not fully check the evil, they would prove very useful in counteracting it to a great extent. It was true, as observed by several hon'ble members, that the present law was stringent and comprehensive enough. But the fact that the law had all along remained a dead-letter as it were, and that the clandestine sale of liquors in dispensaries had been going on without let or hindrance, and that it had now become a sort of a public nuisance, was, he thought, proof sufficient that the law was not sufficiently strong, or that the executive had not been sufficiently strong under that law. For if that was not the opinion of the executive, surely Mr. Money, the member in charge of the Excise Department in the Board, would not have recommended fresh legislation, nor would the head of the Government have adopted that suggestion and recommended its adoption by the Council. BABOO KRISTODAS PAL agreed with the hon'ble member opposite (Mr. Reynolds) that the evil, whatever it was, was confined chiefly to Calcutta and four or five other towns, and that it was not therefore necessary that these clauses should apply to the provinces generally. In fact, he thought it would be better to confine the operation of the provisions to Calcutta and its suburbs by way of experiment only; and if that suggestion were adopted, then the proposed clauses might come under the other Part of the Bill.

As for the question as to what was a medicine, that objection he thought was met by the provision that the sale was to be made on medical prescription.

[The HON'BLE MR. DAMPIER pointed out that if the liquor was mixed with other ingredients, then no prescription was required. A prescription was only necessary when the liquor was to be sold pure. Hence the difficulty, at what point did it become mixed ?]

The HON'BLE BABOO KRISTO DAS PAL continued.—Then came the question who was to be the authority to give a prescription ? and whether the Council should recognize a Licentiate of Medicine. He was a functionary recognized by the Government, by the medical faculty, and by the University. In fact the Licentiate of Medicine was usually known by the name of Sub-Assistant Surgeon, who passed the Medical College and held a diploma. In Calcutta the native medical profession chiefly consisted of these Licentiates of Medicine, who were authorized members of the medical profession. It was true that there were many who could not afford to pay for European medicine, or who had not faith in allopathy, and had recourse to the Hindu system of medicine, or to homeopathic treatment. But where allopathic medicines were prescribed, they were usually prescribed by a graduate in medicine, or other medical gentleman holding a diploma. So he did not think

the Council would be acting contrary to any recognized rule of the Government by recognizing those who held the diploma of Licentiate of Medicine and Surgery.

He entirely agreed with the hon'ble member in charge of the Bill as to the difficulty of regulating the sale of liquors in dispensaries where the owners had also their private residences on the same premises. But the number of such dispensaries, he thought, was very limited in the town; and if the Council could not reach them, he thought they could very safely reach those dispensaries which were kept merely as medicine shops. He also agreed with the hon'ble member that the provisions contained in the amendment would fail in effect if there were not a special provision also for restricting the quantity of liquor to be kept in store in medicine shops, and with that view he had prepared an amendment to the following effect. He proposed to add a proviso to the new section 10*a* after the words "Licentiate of Medicine:"—

"Provided also that no such chemist, druggist, or apothecary, shall keep more than two bottles of brandy or other spirituous or fermented liquor in any such shop."

The hon'ble member in charge of the Bill had made inquiries as to the quantity of liquor necessary to be kept in a dispensary, and he had ascertained from one of the most respectable dispensaries in the town that one bottle of brandy at a time would be quite sufficient. To be on the safe side, BABOO KRISTODAS PAL had laid down a maximum limit of two bottles, and then, by way of penalty, he would add at the end of section 10*c* the words "or who shall keep more than two bottles of brandy or other spirituous or fermented liquor." If these amendments were accepted, he thought they would meet the object of the hon'ble member on his right (Baboo Doorga Churn Law), and, with the other sections, to a great extent meet the views of those who petitioned the Government for some legislation on the subject.

The HON'BLE MR. DAMPIER thought that before the amendment was put, the wording should be very carefully considered, so as not to interfere with premises which were used for private occupation as well as for dispensaries, and therefore he thought the Council should vote upon the amendment subject to careful reconsideration at the next meeting, supposing that they should be inclined to accept the general principle of it.

The original motion that sections 10*a*, 10*b*, and 10*c*, be introduced, was then put and negatived.

Sections 11 to 13 were agreed to.

The HON'BLE MR. DAMPIER said it was urged upon the Select Committee that they should insert in the Bill a section making over the duty of licensing liquor-shops (at any rate in Calcutta) to the municipal bodies. A good deal of discussion had taken place on that proposal, but the Select Committee were not then in a position to adopt such a provision. It was not a matter on which it would have been right to act in opposition to the Government. Since then the views of the Government had been ascertained, and the result was that under the authority of the Lieutenant-Governor MR. DAMPIER proposed a section by which the Government took power to make over to the municipal

body, in any place, the duties connected with the granting of abkaree licenses. He moved the introduction of the following section after section 13 :—

"13*a*. Notwithstanding anything in this or in any other Act contained, it shall be lawful for the Lieutenant-Governor to assign to the Justices of the Peace for the Town of Calcutta, or to any other Municipality, such functions and powers as he shall think fit in respect to the granting, withholding, and withdrawal of licenses for the sale of spirituous or fermented liquors and intoxicating drugs (being functions and powers which, but for such assignment, might legally be exercised by any officer of Government), to be exercised by such Justices or by such Municipality within the limits of their respective jurisdictions, under such conditions and subject to such rules as the said Lieutenant-Governor may impose; and the Lieutenant-Governor may at any time withdraw and revoke any functions and powers which he has assigned under the provisions of this section."

The HON'BLE MR. HOGG said he had not seen a copy of the notice of the proposed amendment before he came into the Council that morning, but it seemed to him to be open to question how far it would be fair to pass a section for imposing peremptorily on the municipality the conduct of Abkaree business, subject to such rules and conditions as the Lieutenant-Governor might prescribe. It might happen that the Justices or other local bodies might not desire to take over the duties connected with the licensing of liquor-shops subject to the conditions imposed by the Government. He therefore thought that some provision should be added by which the rules and conditions referred to should be made subject to the consent of the municipality concerned. If the hon'ble mover had no objection to add some words providing for such consent, MR. HOGG would have no objection to offer to the section.

The HON'BLE MR. DAMPIER observed that he believed there would be no objection to provide for such consent, and he thought it would be advisable also to make such transfer of functions subject also to the sanction of the Governor-General in Council.

The HON'BLE BABOO KRISTODAS PAL said he would support the addition proposed by the hon'ble mover of the Bill, as he had taken the initiative in this matter, although the proposed addition did not seem to him to go far enough. It simply vested the Government with discretion to make over the power of licensing liquor-shops within the town to the Justices. Still he accepted it as a concession, because he assured the Council that there was a strong opinion among the public that municipalities were the best authorities to regulate the liquor traffic, inasmuch as they had a direct interest in the consumption of liquor within the limits of the municipalities. And it was fairly argued that if local bodies were considered fit to exercise control over matters relating to conservancy, surely they were fit to act in a matter so vitally affecting the morals and health of the people in the municipality. He therefore hailed with pleasure the concession made by the Government, and also supported the suggestion made by the hon'ble member on his right (Mr. Hogg), that if the power of granting liquor licenses be conceded to the municipalities, it ought not, without their consent, to be made subject to any conditions or rules, particularly in a town like Calcutta, where the Justices had full control over their own affairs, and they ought not to be fettered by any rules beyond the requirements

of the law. Therefore he hoped the hon'ble mover would make the alteration suggested by the hon'ble member who spoke last.

The further consideration of the proposed section and of the Bill was then postponed.

CALCUTTA MUNICIPALITY.

The HON'BLE THE PRESIDENT, before adjourning the Council, said he hoped that at the meeting of the Council on Saturday next they should be able to take up the consideration of the Calcutta Municipal Bill, and he would take this opportunity of drawing the attention of hon'ble members to the eighth rule of the Council, which required that members who wished to make any original motion at any meeting must give notice of their intention three days before the day of the meeting at which they intend to make the motion. The Bill was a long one, and he thought it would tend much more to the better and early disposal of it if hon'ble members would think of it and give notice of the amendments which they intended to move.

The HON'BLE BABOO KRISTODAS PAL asked whether he was in order in stating that he believed it was understood that the report of the Select Committee on the Calcutta Municipal Bill would not be taken into consideration by the Council until November next. He had reason to believe that some of the public bodies who intended to submit representations were under the impression that the Bill would not be taken up until that time.

The HON'BLE the PRESIDENT thought that the public business required that the consideration of the Bill should be taken up much earlier, and now, with this notice, he hoped that the public bodies referred to would give the Council the benefit of their assistance before the next meeting, or at latest the meeting after.

The Council was adjourned to Saturday, the 14th instant.

Saturday, the 14th August 1875.

Present:

The Hon'ble V. H. SCHALCH, C.S.I., *presiding*.
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO DOORGA CHURN LAW,
and
The Hon'ble BABOO KRISTODAS PAUL

SURVEY AND DEMARCATION OF LAND.

The HON'BLE MR. DAMPIER moved that the Bill to provide for the survey and demarcation of land be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Dampier said, at the last meeting certain amendments which he proposed to introduce after section 10, and which were then marked sections 10*a*, 10*b*, and 10*c*, were reserved for further consideration. Having reconsidered those sections, and having considered the criticisms then made, he had redrafted the sections, and they were now numbered 11, 12, and 13. Notice of this amendment was given, and he had now to propose that the sections which were circulated as proposed amendments do stand as sections 11, 12, and 13 of the Bill in lieu of those which now bear the same numbers in the printed Bill. The sections were as follows:—

"11. When the demarcation of a village or other convenient tract has been completed, the Ameen or other Survey Officer shall, before sending in to the Collector the maps and papers relating thereto, by a general notice in which the names of all persons required to appear shall be specified, and which shall be posted up at a convenient place in the village or tract, call upon all persons who have pointed out any boundaries in such village or tract on behalf of those interested to attend before him within three days of the publication of the said notice for the purpose of inspecting the maps, field-books, and similar papers in which any boundary pointed out by any such person has been represented, and by signing such maps and papers to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them; and every person so called upon shall be legally bound to attend before such, Ameen or Survey Officer, and to inspect the papers, in accordance with such requisition.

Ameen or Survey Officer to call upon persons to sign maps or papers.

Any person so called upon who may object to sign the maps and papers as aforesaid shall be required to state his objections in writing, and such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

Statement of objections.

The signature affixed to any maps or papers under this section shall be in attestation of the fact that the boundaries thereon represented, or any of them, have been represented in accordance with those pointed out by the person signing; and the affixing of such signature shall not be held to prejudice the right of any person interested to make any objection to such boundaries on any other ground before the Collector under the next succeeding section."

Effect of signature.

"12. On receipt in the Collector's Office of the maps or papers showing any boundaries which have been demarcated, the Collector shall cause a notification to be posted in his Office, and in such other places as he may think proper, informing all persons concerned that the maps and papers relating to the boundaries in the village or tract specified are open to inspection; and requiring any person who may have any objections to prefer, to prefer such objections within six weeks of the date of the posting of such notification, after which time the Collector will proceed finally to confirm the boundaries as laid down for the purposes of the survey.

On receipt of maps, Collector to post notification in his Office.

Whenever the Collector shall have reason to believe (either from the failure of any person interested or his representatives to sign the maps and papers on the spot when required by the Survey Officer to do so under the last preceding section, or for any other reason), that any zemindar or person interested is likely to object to any boundary as laid down, or as represented in the said papers, the Collector shall cause a special notice requiring such zemindar or other person to attend personally or by duly authorized agent before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than one month after the service of the notice, for the purpose of signing and thereby admitting the correctness of any maps or other papers which have been prepared under this Act in respect of any boundary in which such zemindar or other person is interested, or of stating in writing

Collector when to issue special notice.

the substance of any objection which he may wish to prefer against the correctness of such maps or papers; and if any person so summoned shall fail to attend and to sign the said maps or papers, or to give in a written statement of his objections within the time prescribed, the Collector may proceed finally to confirm the boundaries as represented in such maps and papers, for the purposes of the survey and of this Act.

If agent deposits expenses of making copies, Collector shall order them to be prepared.

Provided that if within the time specified any such duly authorized agent deposits with the Collector the necessary expenses of making copies of the said maps or papers, the Collector shall order such copies to be prepared; and as soon as they are prepared, shall cause a notice to that effect to be posted at his Office; and the said agent shall be allowed such time as may be specified in such notice, not being less than fifteen days from the posting thereof, for the purpose of signing or of giving in a written statement of objections.

Procedure when objection is stated.

When a written statement of objections has been given in, as in this section provided, the Collector, after holding any further inquiry which he may deem necessary, shall pass such order in respect of such objections as to him shall seem fit; and if the objections shall seem to him not to be well founded, shall direct that all expenses of such further inquiry, and all expenses entailed on any other person by such inquiry, shall be recovered from the person who made the objection."

Person making subsequent objection, may be required to deposit costs of further inquiry.

"13. Whenever any person having failed to sign the maps and papers, or to give in his objections in writing within the time prescribed by the notification or by the special notice mentioned in the last preceding section, shall, at any time before the Collector has finally confirmed the boundaries for the purposes of the survey, prefer any subsequent objection against the correctness of any maps or papers in respect of which such notification or notice was issued, the Collector shall require him to deposit the estimated costs of any further inquiry which it may be necessary to make in respect of his objection; and if the said person shall fail to deposit such costs within the time specified by the Collector, he shall be deemed for all purposes of this Act to have admitted the correctness of the said maps and papers. If the costs of any inquiry which may be deemed necessary be deposited, the Collector shall make such further inquiry at the expense of the person so objecting; and if the objection shall seem to the Collector not to be well founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other persons on account of such inquiry.

Provided that no person so making an objection after the prescribed time shall under any circumstances be entitled to recover the expenses which he is required to deposit before any further inquiry is made in respect of such subsequent objection."

The Hon'ble Baboo Kristodas Pal said, as the sections proposed by his hon'ble friend at the last meeting were postponed at his instance, he had much pleasure in saying that he accepted the amendments now proposed.

The motion was agreed to.

In the postponed section 2, the following amendments were made on the motion of the Hon'ble Mr. Dampier:—

(1.) The interpretation of "Collector" was altered so as to provide that "Collector" meant every Collector of a district, and included every officer either generally or specially vested with the powers of a Collector under the Act.

(2.) The definition of "tenure" was amended so as to include "Ghatwáli holdings."

The preamble and title were agreed to, and the Bill was then passed.

AMENDMENT OF THE ABKAREE ACTS.

The HON'BLE MR. DAMPIER moved that the Bill to amend Act XI of 1849, Act XXI of 1856, and Act XXIII of 1860, be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER said that a few of the sections which were passed at the last meeting of the Council must engage their attention again. Sections 12 and 13 of the Bill, the tippling sections, referred to Calcutta, its suburbs, and Howrah only. As they now stood, they were in the general part of the Bill; but although they applied to the Suburbs and Howrah (which strictly speaking were mofussil), as well as to Calcutta, he thought on the whole—and that appeared to be the sense of the Council at the last meeting—that it would be better that the sections should be transposed so as to stand at the end of Part II, which contained the alterations in the Calcutta Abkaree Law.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that the words "twenty-five, twenty-six" be inserted after "twenty" in line 3 of section 3, and that in page 3, line 21, the following sections be inserted after the words "Fort William:"

"**25.** Any Abkaree Officer who shall delay carrying to the Collector, and any Police Officer who shall delay carrying to a Magistrate of Police, any person arrested, or any illicit articles seized under this Act; and any Abkaree or Police Officer who shall neglect to report the particulars of an arrest, seizure, or search, within twenty-four hours thereafter, shall be liable to a fine not exceeding two hundred rupees."

Penalty for Abkaree and Police Officer delaying to carry person arrested or articles seized to Collector or Magistrate.

"**26.** Any Abkaree or Police Officer who shall vexatiously and unnecessarily seize the goods or chattels of any person on the pretence of seizing or searching for illicit spirituous or fermented liquors, or intoxicating drugs, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess, not required for the execution of his duty under this Act, shall be liable to a fine not exceeding five hundred rupees."

Penalty for Abkaree or Police Officer vexatiously seizing goods or arresting any person.

The object of the amendment was simply to carry out the principle adopted elsewhere in the Bill of giving Police Officers the power which the existing law gave to Abkaree Officers. It was proposed to insert here two new sections amending sections 25 and 26 of the old law, by merely putting in such words as were necessary to place Police Officers in the same category as Abkaree Officers with reference to the powers conferred by those two old sections of the law.

The motion was agreed to.

The HON'BLE MR. DAMPIER said he must explain the next amendment which stood in his name, and which referred to Act XXIII of 1860. That was a short Act of five sections, which was referred to in the Bill as it stood when introduced. His attention had recently been drawn to this Act, and he found that it afforded an illustration of the great necessity of codifying the Bengal Acts. Every section of the Act, with the exception of part of the first section, had been either superseded or expressly repealed by an Act of

1863; section three was superseded by a section of this Bill, section four was obsolete, and so on. The extant part of the first section was the law which empowered the Government to impose a duty on *doasta*, or country-made spirits, up to Rs. 3 a gallon; and it so happened that in the new Customs Tariff Act, which had just been passed by the Council of the Governor-General, there was a section which overrode that provision and made it obsolete. The new law recited that as it was desirable that country spirits should be taxed in some proportion to imported spirits, the Government was authorized to impose such tax as it thought proper, not exceeding the duty on imported spirits; and thus this Council were enabled to wipe out Act XXIII of 1860 altogether from the Statute Book, and accordingly an amendment was necessary in the present Bill.

On the motion of MR. DAMPIER verbal amendments were then made in Section 7 and the Schedule, with the object of repealing the unrepealed portion of Act XXIII of 1860.

The HON'BLE BABOO KRISTODAS PAL said as he observed that public attention had been drawn to an amendment of which he had given notice, he thought it was desirable that he should take time to consider the amendment before bringing it forward. He would, with the permission of the President, postpone the consideration of his amendment until the next meeting of the Council.

The further consideration of the Bill was then postponed.

CALCUTTA MUNICIPALITY.

The HON'BLE THE PRESIDENT said that in the list of business the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta was placed to be taken into consideration. However, applications had been made to the Council from the Justices of the Peace, the Trades' Association, and the British Indian Association, for the postponement of the Bill, and he had referred the matter to the Lieutenant-Governor. He therefore proposed to let the consideration of the Bill stand over until the orders of the Lieutenant-Governor were received upon the subject.

The Council was adjourned to Saturday, the 21st instant.

Saturday, the 21st August 1875.

Present:

The Hon'ble V. H. SCHALCH, C.S.I., *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO DOORGA CHURN LAW,
and
The Hon'ble BABOO KRISTODAS PAL.

AMENDMENT OF THE ABKAREE ACTS.

THE HON'BLE MR. DAMPIER moved that the Bill to amend Act XI of 1849, Act XXI of 1856, Act XXIII of 1860, and Act IV (B.C.) of 1866, be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. DAMPIER said that at the last meeting the sections which were now printed as Sections 12 and 13 of the Bill were transposed so as to come immediately after Section 6. He now proposed that those sections should stand as the last two sections of Part II, and that the following section, of which notice had been given, should come immediately after Section 6, and stand as Section 7 of the Bill:—

"Any chemist, druggist, apothecary, or keeper of a dispensary, within the town or suburbs of Calcutta, or Howrah, who shall, between sunset and sunrise, allow spirituous or fermented liquors, which have not been *bond fide* medicated, to be drunk on his business premises by any person not employed in his business, and any such person who shall between sunset and sunrise drink such liquors on such premises, shall be liable to a fine of two-hundred rupees, in addition to any other penalty to which he may be liable under this or any other Act; and any Abkaree or Police Officer above the rank of peon or chuprassee, who may have reason to believe that the provisions of this section are being infringed, may enter upon such premises and seize and carry away such liquors, and, in case of resistance, break open any door, and force and remove any other obstacle to such entry or seizure, and arrest and detain the owner or occupier of the said premises, with all parties whom he suspects to be concerned in such unlawful drinking; and upon such seizure or arrest as aforesaid, the Abkaree Officer and Collector shall deal with such liquors or persons as provided in Section 22 of Act XI of 1849, and the Police Officer and a Magistrate of Police shall deal with them as provided in Section 5 of this Act."

This clause was the outcome of the discussions which had taken place in the Council, in the Select Committee, and elsewhere; and it seemed to him that the form in which it stood was the one which would be most effective for the purpose in view, and on the whole the least likely to open the door to harassment and vexation to respectable persons. It would be observed that the law as it stood made it absolutely illegal for the chemist or druggist who had no license to sell spirituous or fermented liquors either in the day or night time. The clause he now proposed to introduce went farther, and came to this, that in the night

the chemist or druggist should not be able to *give* his friend a glass of liquor on his business premises (even without selling it). The clause took away from the chemist, who was detected in the malpractices against which it was directed, the power of escaping the penalty of the law by the false excuse that he was not selling liquor, but merely giving a glass to a friend. It made penal the fact of giving or consuming spirits on the business premises of chemists between sunset and sunrise.

The latter part of the section provided that any abkaree or police officer above the rank of a peon, who had reason to suspect that spirits were being illegally consumed, might enter upon the premises, seize the liquor, and arrest the people consuming it. There was no great fear of privacy being intruded upon under this clause, as it only referred to the business premises, and not to the private dwelling place. And if hon'ble members would look to the amending Section 25 which was in the Bill, they would see that heavy penalties were prescribed against abkaree and police officers who should be guilty of any excess in the exercise of their powers under the law.

The Hon'ble Mr. Reynolds said he thought the hon'ble member who had moved the amendment might be congratulated upon having hit upon a form of words which would be generally accepted as satisfactory. He would not say that the proposed law could not be evaded. It was perhaps impossible for human wisdom to frame a law which it should not be in the power of human ingenuity to evade. But, generally speaking, he imagined that the effect of the enactment would be practically to remove the evil complained of without any unnecessary interference with what was legitimate, necessary, and useful.

There was only one point in which he would wish to see the wording of the amendment modified. He referred to the introduction of the words "between sunset and sunrise." It seemed to him that if there was to be any limitation at all, the words "between sunrise and sunset" would have been more appropriate. He would not himself accept such an argument, but it might be argued with some plausibility that those who required spirituous liquors for medicinal purposes ought to be allowed to get them from chemists at times at which they were not obtainable from the ordinary shops. But for the limitation in the amendment he could see no sufficient reason, and he thought the words an injurious restriction of what was otherwise a useful and valuable provision. He therefore appealed to the mover of the amendment to exclude those words from his motion.

The Hon'ble Mr. Dampier said he was unable to accept the suggestion of his hon'ble friend. The fact was that as regards a person who was really ill,—who, for instance, had a fainting fit, or had met with an accident and was taken into a chemist's shop,—the law was left precisely where it was before. Under such circumstances the chemist would certainly give the person a glass of brandy if necessary, and might charge for it; and Mr. Dampier hoped no Magistrate would be found in India to convict the chemist of an offence for so doing under the existing law or under the Bill before the Council. The evil against which the clause was directed occurred, he believed, principally at night, after the licensed liquor-shops were closed; when people went to the chemist's

premises, and either drank the liquor there or carried it off clandestinely. He did not think it was necessary, in order to meet this, to preclude a chemist from giving a glass of beer or of brandy and water to a friend during the day, provided it was not sold to him. It would be quite sufficient to make it illegal to do so during the night.

The HON'BLE BABOO KRISTODAS PAL said he supported the amendment on the principle that something was better than nothing. He did not find his way clear to a satisfactory solution of the difficulty connected with the sale of liquors in dispensaries; and as such sale could not be prevented without interfering with the legitimate business of druggists, he accepted the amendment of his hon'ble friend and hoped it would be passed.

The motion was agreed to.

The HON'BLE MR. DAMPIER said, passing to the other printed notice of amendment, he would move that the following section be introduced as the last section of the Bill:—

"Notwithstanding anything in this or in any other Act contained, it shall be lawful for the Lieutenant-Governor, with the sanction of the Governor-General in Council, to assign to the Justices of the Peace for the Town of Calcutta, or to any other Municipality, such functions and powers as he shall think fit in respect to the granting, withholding, and withdrawal of licenses for the sale of spirituous or fermented liquors and intoxicating drugs (being functions and powers which, but for such assignment, might legally be exercised by any officer of Government), to be exercised by such Justices or by such Municipality within the limits of their respective jurisdictions under such conditions and subject to such rules as the said Lieutenant-Governor may impose; and the Lieutenant-Governor may at any time withdraw and revoke any functions and powers which he has assigned under the provisions of this section.

"Provided that such functions and powers shall not be assigned as aforesaid without the consent of the said Justices or the Municipality concerned:

"Provided also that no such conditions or rules shall be imposed by the Lieutenant-Governor after such assignment has taken place without the consent of the said Justices or the Municipality concerned."

The section had already been before the Council, and he had made such alterations as seemed to be necessary in consequence of the remarks which had then been made.

The motion was agreed to.

Section 1 was passed with the date of the commencement of the Act fixed as that on which it might be published with the assent of the Governor-General.

Section 2 was agreed to.

The preamble and title were passed after the omission from them of all mention of Act XXIII of 1860.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

CALCUTTA MUNICIPALITY.

THE HON'BLE THE PRESIDENT said that the consideration of the Calcutta Municipal Bill had been postponed till after the holidays: it would probably be taken up very shortly after the holidays, and he trusted that the Justices and other public bodies, as well as private individuals, who might wish to submit any representations, would do so as soon after the holidays as possible.

The Council was adjourned to a day of which notice would be given.

Saturday, the 13th November 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble Baboo Kristodas Pal.

STATEMENT OF THE COURSE OF LEGISLATION.

His Honor the President said, "Before calling upon the hon'ble members to speak to the motions which stand in their names, I will, with the permission of the Council, make a very brief statement of the condition of our legislative business. It will be in the recollection of the Council that on the 19th of December last I laid before the Council a programme of the various measures which we proposed to bring before the Council. Again, on the 10th of April last, I made a further statement, showing how far that programme had been carried out, and what additions had been subsequently made to it. I now desire briefly to remind the Council of the measures which have been passed into law since the 10th of April last, and of the measures which are still pending before the local legislature. Since that date the Council have passed, under the presidency of the Hon'ble Mr. Schalch, two Bills, one to provide for the survey and demarcation of land, and secondly, a Bill to provide for the amendment of the Abkaree Acts. The first of these two Bills has already received the assent of the Governor-General in Council, and the second, viz., that referring to the Abkaree, still awaits His Excellency's assent. This leaves the following Bills which are still requiring the consideration of the Council.

"The first is a Bill to provide for the voluntary registration of Mahomedan marriages and divorces. That measure will, we hope, be taken up by the Council this day, and perhaps finally passed.

"The next is a Bill to consolidate and amend the law relating to the municipal affairs of Calcutta. That Bill also stands among the list of motions this day, and will, I hope, be proceeded with. Well, that Bill has passed through the Select Committee. The number of its clauses is great, amounting, I think, to some 350, and in passing through this Council much time will be required. Recently, various propositions have been afloat for making constitutional changes. Now, it will be in the recollection of the Council, that the Government of Bengal is not averse to any moderate or any judicious changes in the constitution of that

Municipality which may commend themselves to the majority of interests concerned, and also to the majority of this Council. That being the case, in April last I put forth a Minute upon this somewhat important object, stating the various possible changes and improvements, some of them, however, alternative improvements, which, if passed by this Council, would commend themselves to my concurrence and approval. These improvements having been referred to the Select Committee, the Committee reported that no constitutional changes were in their opinion necessary. From that I should be inclined to infer that the sense of the Council is perhaps adverse to the introduction of any important changes in the constitution of the Calcutta Municipality; still, if any hon'ble member should have any specific motion to bring forward, any definite change to propose, all I can say is that I am still willing to consider patiently and carefully any such suggestion, and I believe I may answer for the Council generally that it would be pleased to do the same; and, in reference to my own opinion, for what it may be worth, as to possible changes or possible alternatives, I would refer hon'ble members to the Minute which I have referred to.

"The next Bill relates to the provision of irrigation and canal navigation in the provinces subject to the Lieutenant-Governor of Bengal. That measure has been carefully considered by the Select Committee, and certain questions referring thereto were referred by the Select Committee to the Government of Bengal. I have myself conferred with the hon'ble member in charge of the Bill regarding these references, and I have been able to give such replies as will enable my hon'ble colleague to proceed with the business of the Select Committee upon this subject; so I hope that this measure will soon be submitted to the Council in such a shape that it may be speedily passed. I need not add, perhaps, that at the present time there is a particular reason why this Bill should be passed into law as soon as it may be possible, for although the southern canals are not much called into play, owing to the abundant rains which have been vouchsafed to that part of the country (Orissa), yet the northern canals in south Behar will be most urgently required to save both the autumn and spring crops from ruin.

"The next Bill is for the purpose of making better provision for the partition of estates paying revenue to Government in the Lower Provinces. That Bill also has been carefully considered by the Select Committee; at least it was put down as being under the consideration of the Committee, and I know, and the Council knows, that a great deal of valuable opinions—a mass of opinions—has been collated upon the subject; and I think that if the hon'ble member in charge of the Bill shall have sufficient leisure during the present sessions of the Council, he will be able to bring the measure forward in such a shape as to have it passed before the close of the session.

"The next Bill is that for amending and consolidating the law relating to Municipalities in the mofussil or interior of the country. That also has received, as we all very well know, the most excellent, patient, and able consideration on the part of the hon'ble member in charge of it (Mr. Dampier). A variety of important references has been made by him to Government upon the various points involved. These references are under our immediate consideration, and

I hope very soon to be able to give replies thereto, and thus there is a chance of these matters being brought by the Select Committee in a complete shape before the Council. It will be in the recollection of the members of the Council that this is one of those Bills which is not only an important Bill, but a lengthy Bill, and contains some hundreds of sections.

"The next Bill is one to provide for inquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances. That also, as the Council will recollect, was referred to a Select Committee, but during their deliberations certain legal difficulties were encountered, and they appeared to the Committee to be of so grave a nature that I have submitted a reference on the subject to the Government of India, to which a reply has not yet been recieved. I hope that a reply in some way or another will be soon received, and that if any measure is to be submitted to be passed by the Council on the subject, it might not occupy any great length of time.

"The next Bill is one to provide for the compulsory registration of possessory titles in landed estates. That Bill has been drafted by one of our hon'ble colleagues, and it is believed that various modifications and alterations will have to be made, and I am not able to say now as to when the measure will be fit for acceptance by the Council.

"So much for what may be called the Bills actually pending before the Council. Besides these, there are several projects of law, which have been mentioned by me at different times in the Council, and upon which Bills yet remain to be drafted.

"The first of these is to provide a law for the appointment of managers in joint undivided estates. I believe that some progress has been made in the drafting of that Bill, as its importance is very considerable, and I hope that perhaps this measure will be completed during the present session.

"The next project is a proposal for certain improvements in the sale law, that is, a law for the sale of estates paying revenue to Government on account of default in the payment of revenue. This proposal has been forwarded for the consideration of the British Indian Association, which may be taken as representing to a very great degree the important interests concerned, and a reply from the Association is awaited.

"Then comes a proposition for the amendment of the General Police Act V of 1861. Upon that subject I may explain that a very careful Bill has been drafted, with the concurrence of the principal Police authorities, and has been submitted for the general approval of the Government of India. It seemed necessary to do this, inasmuch as whatever is done, supposing anything is done, in Bengal, may be taken to affect in the same way neighbouring local Governments. I have not yet received a reply to the reference which has been made to the Government of India.

"The next proposal is one for the establishment of reformatory schools. It will be in the recollection of the Council that in April last I mentioned this as one of the measures that may possibly require to be taken into consideration. This question was also referred to the Government of India, and we have

His Honor the President.

received a reply that, as the matter appears to be one of general interest, and one affecting all local Governments in India, it should better be taken up by the Council of the Governor-General, and a measure for this purpose has been actually introduced into the Council of the Governor-General. So this project may now be struck off from the list of the business pending before the Bengal Council.

"The next is a proposal for the prohibition of the levy of illegal cesses in navigable channels, high roads, and market-places. Upon this subject a Bill was drafted by our hon'ble colleague, Mr. Schalch, and has since been referred by the Government of Bengal to the British Indian Association, and upon this subject also the reply of the Association is awaited. I have no doubt it will soon be received.

"The next measure is the consolidation of the Abkaree Acts. That is a matter requiring a great deal of care, and it has been taken up by our learned Secretary, and I understand that it has been partially prepared.

"The last project is one of merely local importance, hardly affecting any considerable portion of these provinces, viz., some alteration in the rent law for the Chota Nagpore Province. The main object of that is to exclude that province from the operation of certain sections of the general rent law of Bengal, which are considered by well-known authorities, and especially by the late Commissioner, Colonel Dalton, as not applicable to the circumstances of that province.

"Thus much for the pending business. I have no particular additions to make to-day to the programme which was made a year ago, and which, as hon'ble members will see, has been steadily kept in view. But it will be clear that there are four important measures which have really to be taken up;—I may say five. First, there is the matter of such immediate importance in respect of the city of Calcutta, viz., the Calcutta Municipality Bill. But besides that, there is the Municipal Bill for the mofussil or the interior of the country generally, upon which the health and comfort of the inhabitants of the towns and large villages of these great provinces so much depend in future. But besides these, there are three great measures intimately affecting what I must regard as the greatest of all the great interests in these provinces, viz., that relating to the tenures of land. One of these Bills relates to the partition of estates, the second relates to the compulsory registration of possessory titles to lands, and the third relates to the appointment of managers for joint undivided estates. These three very important measures have for now nearly a year been before the Council; much labor has been bestowed upon them, and at one time or another much careful consideration has been devoted to them. I must confess to some disappointment in that these measures should not yet have been ready for submission in a complete shape to the Council; but it must be remembered that they are in themselves difficult, and require much deliberation. Still, I must again urge them very much upon the attention of all hon'ble members whose experience lies in that direction, and I will express the most earnest hope of the Government of Bengal that the Council may succeed in passing these measures into law during the present session: and

I hope that if we shall succeed in obtaining the undivided care, attention, and time of the hon'ble member (Mr. Dampier), we may hope to succeed in bringing these measures into completeness within a little time. If, during the course of the session, further projects of law shall appear to be called for by the circumstances of the country, I will then lose no time in announcing them to the Council. But my immediate object in making these remarks is to entreat the attention of hon'ble members to those important measures which have been for a long time, and still are, pending before the Bengal legislature.

"I will now call upon the Hon'ble Mr. Dampier to speak to the motion which stands against his name."

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

THE HON'BLE MR. DAMPIER said, the Council would remember that the Bill for the voluntary registration of Mahomedan marriages and divorces was considered and finally settled in Council on the 25th March last, but the final passing of the Bill had been delayed until now at His Honor's request. MR. DAMPIER had since looked over the Bill for the last time, as usual, and he found that there were three verbal additions that he wished to make before the Bill was passed, namely, to insert headings in the Schedule to the different forms of registers required to be kept. The object of the amendment was merely to bring the schedule more into conformity with the substantive provisions of the Bill. The amendments were to prefix the following headings to the forms of registers specified in the schedule, namely—

"Form A, Book I.—Register of marriages (as prescribed by Section 6 of the Act for the voluntary registration of Mahomedan marriages and divorces)."

"Form B, Book II.—Register of divorces other than those of the kind known as 'khula' (prescribed by Section 6 of the Act for the voluntary registration of Mahomedan marriages and divorces)."

"Form C, Book III.—Register of divorces of the kind known as 'khula' (prescribed by Section 6 of the Act for the voluntary registration of Mahomedan marriages and divorces)."

The amendments were agreed to.

THE HON'BLE MR. DAMPIER then moved that the Bill be passed.

HIS HONOR THE PRESIDENT said—"Before putting the motion to the Council, I desire to explain that this Bill having been carefully settled in Council during last spring, I asked the Council to be good enough to allow a short delay before it was finally passed, in order that, as the matter is one very much affecting the domestic concerns of a large portion of the people of these provinces, I might have time to see whether any substantial objections would be started in any quarter against the measure, and also that I might have time to visit some of the principal centres of Mahomedan intelligence and education in these provinces in the interior of the country, and to see whether the measure is likely to meet with the general approval of those classes whom it concerns. As the Council knows, no material or substantial objection of any kind from the classes concerned has been received since the publication in April last of the Bill as it

His Honor the President.

now stands. I have had the benefit of visiting both Patna and Dacca, the western and eastern Mahomedan capitals in Bengal, and of learning the feelings of the Mahomedan gentry there. At Patna I found that the majority of educated Mahomedans are in favor of the Bill, but there were some objections made by certain gentlemen there; but these objections I found are based upon what I must call misapprehension of the Bill, to the effect that the Bill is supposed to prescribe things which it does not prescribe, and to interfere with matters with which it really avoids interference.

"Then at Dacca I found but one opinion as to the expediency and necessity of passing this Bill into law, and carrying it into effect as soon as possible. So I can only say that if the Council now should be pleased to pass the Bill, I for one am prepared to give my most entire concurrence and approval to it. The Council will recollect the grave social disadvantages which the Bill is intended to meet. First, the difficulty of registering the celebration of marriages among the poorer classes of Mahomedans, and secondly the difficulty of proving them; then the looseness of the marriage tie. Constant disputes break out in that respect, and the social demoralization therefrom arising lead to disputes and feuds, which are attested not only by general repute, but also by the records of the courts, and especially by the criminal courts. All these evils are well known to the Council, and I need not dwell upon them; and I think it will be the opinion of all hon'ble members who have experience of the working of these courts that registration of this kind will provide, to a considerable degree, a remedy to remove these evils, and become more and more effectual year by year. The registration, it will be remembered, is purely voluntary. Those Mahomedans who live in places where there is a certain amount of religious organization will be able to celebrate their marriages in the most orthodox manner, and they will not require registration; whereas their poorer brethren in the remoter localities, who constitute the vast majority of the Mahomedan population, and who do not enjoy those advantages, will now have the means of registration if they choose to avail themselves of it: and it seems to me very hard upon the poorer and humbler classes of Mahomedans if any rich or fortunate individual among the community, who does not want registration, shall be allowed to object to those who wish to avail themselves of the advantages to be conferred by this Bill doing so if they choose. The question is, do the Mahomedans, or do they not wish to have this registration? If they do, then why, in the name of everything that is sensible and humane and considerate, should the Council not give them the benefit of it? The utility of the measure will be perfectly tested by the number of registrations which will be effected. If a good number of registrations are effected, then those who object to the Bill will not be able to say that it ought not to have been passed; and if there are few registrations, it is perfectly clear that at all events no harm will be done. Under these circumstances, believing that the Bill, if passed, will be of great social benefit to several millions of people living under this Government, I have great pleasure in putting before the Council the motion which has been made, viz., that the Bill be passed."

The motion was agreed to and the Bill passed.

CALCUTTA MUNICIPALITY.

THE HON'BLE MR. HOGG said, when he asked permission to introduce the Bill to consolidate the Municipal Acts relating to the affairs of Calcutta, he explained to the Council that the measure was brought forward owing to the urgent necessity for consolidating the municipal laws affecting the town of Calcutta. The original Municipal Act had been passed in 1863, and since that time there had been fourteen or fifteen amending Acts. Owing to the multiplicity of the Municipal Acts the law was now on some points not quite clear, and difficulty was experienced by the public in understanding the municipal law under which they were living. Permission to bring in the Bill was given on the 3rd of April, and, when bringing it forward, he briefly explained the amendments in the law as it now stood which he should ask the Council to adopt in this consolidation Bill. The Bill was referred for consideration and report of a Select Committee, who submitted their report on the 19th June. Since then the Bill and the report of the Select Committee, together with the partial dissent of two members of the Committee, had been published with the view of eliciting an expression of public opinion as to the proposals contained in the Bill. Although four months had elapsed since the publication of the amended Bill, the Council had only received one report from any of the public bodies on the provisions of the Bill. The report to which he referred had come from the Justices, which body might be assumed to be the one most interested in the Bill now before the Council. The Justices at a largely attended meeting unanimously recorded their approval of the general principle of the Bill, subject only to their desire to support the dissent of the Hon'ble Mr. Brookes and the Hon'ble Baboo Kristodass Pal. They said that there were many points of detail connected with the wording of the Bill which might be improved; but as their Chairman, Mr. Brookes, and Baboo Kristodass Pal, were members of the legislature, they were content to leave the consideration of those amendments to them.

The report of the Select Committee explained fully the amendments proposed by the Committee, and MR. HOGG would not therefore take up the time of the Council by recapitulating what was recorded in the report, which was in the hands of hon'ble members. There was one point upon which he thought some remarks would not be out of place, and it was to explain why he, as a member of the Committee, together with the other members of the Committee, did not propose any constitutional changes in the Bill. The Council would remember that the Lieutenant-Governor, at the time of the Bill being referred to a Select Committee, recorded a Minute, in which His Honor drew the attention of the Committee to the opinion recorded by the late Lieutenant-Governor as to the necessity of altering the constitution of the Municipality; and His Honor intimated that he was prepared to accept any moderate measure for the municipal government of the town of Calcutta which the Council might approve of. Speaking for himself, the reason why MR. HOGG had arrived at the opinion that it was not advisable to recommend constitutional changes, was that he thought it inexpedient to disturb the present

well organized system, which was in complete working order, unless he was satisfied that it was to be superseded by one which would prove to be more efficient and more popular. Against the existing corporation it was alleged that it was not a representative body. That might be readily conceded as a fact. It might further be conceded that the conduct of municipal affairs was not such as the masses of the population would select if the privilege of unrestricted self-government was accorded to them. But the question then arose—Is Government, is this Council, prepared to concede to the inhabitants of Calcutta a system of real self-government? and Mr. Hogg thought this question must be answered in the negative. No doubt the Council was prepared to grant to the citizens of Calcutta a reasonable measure of independence; but he thought it open to question whether the people of this country, and of Calcutta, were in a state to have real self-government conceded to them. It must be remembered that the views of the masses of the population of this city were in many municipal matters at variance with the views of the governing authorities, and also of the European citizens and rate-payers of Calcutta. The wish of the mass of the population—he said the mass as distinguished from the intelligent portion of the native community, who in a measure agreed with the Europeans—was that they should be left alone, and be permitted to live after the manner of their forefathers. Their idea of good government was a minimum of taxation accompanied by complete immunity from all sanitary control. They objected to be called on to adopt those measures of sanitation which were accepted and acted upon by all nations who had arrived at an advanced stage of civilization. That, he thought, was briefly the view of the mass of the native population.

As regards the views of those responsible for the government of the city, they considered it to be their duty to insist on all the primary rules of sanitation being observed and enforced, and also to press forward works which they knew from experience would be a benefit to the city, and, moreover, be hereafter appreciated, if not by the present generation, certainly by their successors.

That works of high sanitary importance had been pushed on rapidly during the last twelve years under the present administration was an admitted fact, and one which those who were foremost in denouncing the present Municipality would not venture to deny. It was, however, no use ignoring the fact that these works of improvement had been carried out by the Justices with the cordial support of the local Government, not only without the concurrence of the mass of the population, but in direct opposition to their strongly expressed wishes; and not only the expressed wishes of the native population, but also of a section of the European community as represented by at least one English paper, which had strenuously opposed both the drainage and water-supply schemes. If, then, the Calcutta of to-day was a far superior place of abode to what it was twelve years ago, and if many sanitary reforms had been successfully carried out during the last few years, it was all to be attributed to the wisdom of Government in not having accorded to the citizens of Calcutta a too large measure of self-government. These being his views he certainly should not be prepared to support any measure which would, by placing too much power in the hands of the people, stop the progress of sanitary reforms.

He held that what was required for Calcutta and other towns in India was a scheme which, while affording every facility for the views of all classes of the community to be fairly represented in the governing board, should reserve to Government the potential voice in the decision of matters of great importance, and should also provide a strong executive head for the administration of municipal affairs.

The present system, MR. HOGG thought, whatever its defects might be, did in a great measure meet the above conditions; for while providing a strong executive head appointed by Government, it associated with him as many intelligent gentlemen from all classes of the community whom the local Government might be pleased to appoint as Justices.

Then came the question whether selection was better than election. In MR. HOGG's judgment the Government was in a better position to select native gentlemen who would really represent in an intelligent way the views of the different native classes of the community in Calcutta than the public would be if the principle of election was adopted. The objections to the present system, it appeared to him, might be briefly stated as follows:—

1*st*.—That owing to the number of Justices of the Peace, the Municipal Corporation had too many members, and that therefore individual responsibility was not felt.

2*nd*.—That the Justices being created for life, they had not that sense of responsibility which might be secured if they held office for a fixed term of years, say for one, two, or three years.

3*rd*.—That the Municipal Meetings led to much waste of time, as some Justices availed themselves of the opportunity to indulge in long speeches far wide of the points at issue, and thereby kept away European gentlemen of position whose presence would be of great value to the Municipality.

The last objection was far the most serious one, as there could be no doubt that the Municipality did much lack the presence and support of independent European gentlemen.

The remedy which should be applied was not easy to suggest, as MR. HOGG believed that European and Native opinion was at direct issue on the question of the best form of municipal government.

The majority of Europeans advocated a Municipal Board, constituted of members returned by a system of representative election; whereas the Natives, as a body, were strongly opposed to any system which would not encourage the most complete publicity in all matters which came before the Municipal Board; and they argued, and with justice, that the discussions by a small Municipal Board would not be as public as formal debates by a larger body.

To reconcile these conflicting views was almost impossible. Such being the case, it had to be decided whether the views of the European or the Native community should be adopted. On this point MR. HOGG was of opinion that the wishes of the Native community should take precedence of those of the European citizens of Calcutta; for the Natives, besides being far the most numerous, had an abiding interest in the city to which no European could attain.

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MR. HOGG would by all means force on the Natives of India sanitary improvements, but whilst doing so, he would afford them, in the way they liked best, every possible facility for expressing their opinions, and for ventilating their views in the most public manner possible. He agreed with the Natives that publicity could best be obtained by public debates and subsequent press criticisms; consequently he would continue the existing system of debates at the municipal meetings, even though it led, as it undoubtedly did, to great waste of time, and, what was still worse, deprived the Municipality of the support of gentlemen whose counsels were much to be desired.

He would now ask the Council to proceed with the Bill in its present form, leaving out one or two sections which defined the constitution of the corporation of Calcutta, and as the Bill passed through Council, any member who might have a scheme would be able to bring it forward.

But because the constitution of the Municipality was left an open question, that was no reason why the other sections of the Bill, which would be equally applicable to any form of Government, should not be proceeded with and settled.

The Council had received a representation from the Port Commissioners, urging that the Legislature should not, in the case of assessment on property, allow the decision of the Justices to be final. To meet this reasonable request, the Committee had provided in the amended Bill that any person dissatisfied with the amount at which the Chairman of the Justices might assess his property, should be entitled to appeal either to a Board of Justices or to the Small Cause Court.

This, he thought, entirely met the objections urged by the Port Commissioners. Another important amendment introduced by the Committee into the Bill was the provision that there should be an appeal allowed to a Board of Justices, other than executive officers of the Municipality, against the decision of the Chairman of the Justices determining under what class a trade or profession license was to be granted. There was another very important amendment, which affected the lighting and police rates. At present those rates were payable at the close of each quarter; in future it was proposed that they should be collected in advance. The Committee had also introduced into the amended Bill sections to enable the municipality to exercise more strict supervision over the consumption of water in houses, which was most necessary in order to check the present reckless waste of water.

With these remarks he would move that the Bill be taken into consideration in order to the settlement of its clauses.

The HON'BLE BABOO KRISTODAS PAL said that the hon'ble member in charge of the Bill had explained to the Council the reasons which induced the Select Committee not to recommend any change in the constitution of the Municipal Corporation of Calcutta. He certainly agreed with him that although the Bill had been before the public for such a long time, there was not any very decided expression of opinion as to whether any material changes were wanted in the present constitution of the Municipality. Not until only a month ago was any voice heard on the subject, and he believed the hon'ble member was not far wrong when he said that when the Bill was first laid before the Council, there

was such harmony among the several component elements of the Corporation that no change whatever was wanted by any one section of the community. Unfortunately, there had been some friction within the last few months between the executive and the independent members of the Corporation, which had led to somewhat warm discussion, and which in a manner had brought about the present agitation. But independent of that, he thought the subject was well worth the consideration of the Council. The British Government in this country was a progressive one, and the institutions founded by it were essentially progressive in their nature; and as the people were imbued with Western knowledge and ideas, they longed for the Western mode of government, and for the introduction of Western institutions for the protection of their liberties and the advancement of their welfare. It was therefore not at all unnatural that the people of Calcutta, who were admittedly in the van of intelligence and enlightenment, should ask for that measure of self-government which had been accorded to other countries which owned allegiance to the British Crown,—he meant the British colonies and dependencies.

If hon'ble members would look back to the history of municipal government in this city, they would find that about twenty years ago there was an elective system in force. It did not work fairly for many reasons, and was therefore abandoned. Then came the municipal triumvirate. That system also worked for some years, when the public cried for a change. Next came the present Municipality. It was true that this Municipality was not representative in the sense in which that word was usually understood; still it represented, to a great extent, the intelligence, wealth, and respectability of the local community. He admitted that the Corporation, as at present constituted, had undergone changes since,—he meant its *personnel*,—and that the later nominations had to a certain extent (he did not mean to reflect upon individuals) detracted from the character of the Corporation. The Corporation had, however, done a large measure of good. Apart from the many measures of improvement which had been carried out under the present system, and to which reference had been made by the hon'ble mover, it had proved a good school of political training for the people of Calcutta. He might say that since the Corporation had been created, the rate-payers had evinced a lively interest in all its proceedings, and that was simply because the fullest publicity had been given to all that had been done by it. Both when the elective Board used to sit, and when the triumvirate was constituted under the Act of 1856, the proceedings of the Corporation were not published to the same extent as they were now. Then an abstract of the proceedings of the Municipal Commissioners was given to the newspapers, and the public were left to draw their own inferences from that meagre statement. Now the meetings of the Corporation were open to the public. The Press reported the proceedings *verbatim* for the information of the public, and thereby a healthy public criticism was evoked among all classes who paid rates and took an interest in the affairs of the town. If the proceedings of the Justices were so widely discussed by the Press and the public at large, it was due to the present wholesome practice of publicity. The people of Calcutta being thus trained, and having acquired a proper appreciation of their own

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interests, naturally enough asked for a further extension of municipal privileges. They wanted, in fact, a larger measure of self-government. It was true that opinion was very much divided as to the scheme of local self-government best suited to the varied interests of the town; still he believed that opinion was unanimous upon this point, that there ought to be some sort of selection in the election of those who governed the affairs of the town, and that there ought to be a greater freedom of action in the Corporation. The hon'ble mover of the Bill had stated that he doubted whether Government was prepared to give real self-government to the people of this town. He thought it was rather bold on the part of the hon'ble member to make such an assertion in the face of the declaration from the Hon'ble President that His Honor was prepared to consider any reasonable and judicious measure of self-government. BABOO KRISTODAS PAL admitted that, constituted as Government was in this country, their rulers were not prepared to surrender the municipal government of the metropolis to the natives of the country; but he believed that when the people wanted a measure of self-government, they did not mean that they should have the whole thing in their own hands. What they meant was that they should be associated with their European fellow-subjects in the task of local self-government. He might observe that the people of this country, if they were in any way to be useful to themselves and the nation at large, could only be so by associating themselves with their European fellow-subjects. They must learn a great deal, and under the direction and guidance of their rulers might prove themselves equal to the task which they might be called upon to perform. Since England had planted its flag in this country, there had been many important changes in its political organization and its internal administration, and the people had been invited to an active share in the administration of the country; and he believed the Government would admit that they had not been found wanting in taking advantage of that honorable and responsible position which it had pleased the Government to confer upon them. He believed that if the people of Calcutta were associated with their advanced European fellow-subjects in the government of the affairs of the city, they would not be found wanting. As matters now went, even if the Corporation was not considered a representative institution, still it was, to a great extent, a free institution, and he believed it would be admitted that his countrymen had done their part of the work well, and to some extent creditably. Looking to the success which had in some measure attended the attempts of the people of this city to work under and with their European rulers and fellow-subjects, he thought the further extension of the experiment of local self-government might be safely made in the administration of its municipal affairs.

He did not at all agree with his hon'ble friend that the views of the masses were opposed to improvement: that they wanted only the minimum of taxation and no improvements in the town whatever. The mass of the tax-payers of the town certainly did object to excessive taxation, simply because it was often succeeded by excessive expenditure. His hon'ble friend had pointed to some of the improvements which had been carried out in the town, and which had proved highly beneficial in spite of, or rather against, the wishes of the native

community, and also in spite of the opposition of a portion of the European community. He believed the hon'ble member would admit that opposition to the measures referred to did not proceed so much from any desire to obstruct improvement as to prevent excessive expenditure or extravagance; and say what his hon'ble friend might, it could not be denied that, however successful had been the administration of the Municipality under the present system, it had been most costly, and in some cases the expenditure had been unjustifiably extravagant. He believed that were it not for the healthy control exercised by public opinion and by the working Justices upon the executive action of the Municipality, there would have been much greater extravagance and much more addition to taxation.

The hon'ble member in charge of the Bill had been pleased to remark that he would not, and he hoped the Government would not, consent to delegate the executive duties of the Municipality to the *bonâ fide* representatives of the masses. He did not clearly understand what the hon'ble member meant by the phrase "*bonâ fide* representatives of the masses." He believed that many of the Justices professed themselves to be representatives of the mass of the rate-payers in the town, and if such Justices had not abused their privileges and position, he could not understand why his hon'ble friend should object to the *bonâ fide* representatives of the masses. He thought that any person who took his seat in the Corporation, but did not seek to represent the mass of the rate-payers who bore the bulk of the taxation, did not deserve a place in that body.

Then his hon'ble friend had discussed briefly the comparative merits of selection and election, and was satisfied with the present mode of selection. Baboo Kristodas Pal had already said that the selections made by the Government had not been always happy ones. He believed he would not be far wrong were he to say that there were members of the Corporation who were not even acquainted with the English language, although that was the language in which the proceedings of the Corporation were conducted. Could it be expected that gentlemen who were not acquainted with English would be able to appreciate the merits of the measures proposed for discussion, or realize the character and gravity of the questions brought before them. Under any system, then, he would support the principle of election before selection. He admitted that the present Municipal Corporation was an unwieldy body; and if it was unwieldy, he was constrained to say that it was so owing to the action of the Government. As originally constituted, the Corporation was somewhat unwieldy; but when the Government of Sir William Grey saw that the influx of the Bengal, Behar, and Orissa Justices hampered the action of the independent Justices, he eliminated that element; but again additions had been frequently made to the body, perhaps at the instance of the executive head of the Municipality—he could not say with what object—and the Corporation had again gradually become very unwieldy and ill-assorted. He thought it was of the highest importance that the number of members of the Corporation should be limited by law. As matters at present stood, any Chairman who should consider that there was not a sufficient following at his command might recommend the appointment of additional members, and the Government

might assent to the recommendation, and thus the independent Justices might be swamped, and the Corporation might be made more and more unwieldy and less efficient. He thought that in the interests of the town the number of members of the Corporation should be limited. He also agreed with the hon'ble member in charge of the Bill that the tenure of office of the Justices as members of the Corporation should be limited to a term of years. At present the Justices were regarded in the light of life-peers. It was very desirable that there should be an infusion of new blood in the Corporation from time to time. But if there was to be an infusion of new blood, it ought to be done with the consent and support of those who were vitally interested in the working of the Municipality. He meant that the nomination and election of the new members ought to rest in the hands of the rate-payers, or in a body of their representatives. If the Government had the nomination, and if the Justices were to go out by rotation every three years, as proposed, then perhaps the most useful Justices, who in reality rendered the most substantial assistance to the Chairman, but who might be considered obnoxious by reason of their constitutional opposition, might be made to vacate office to the detriment of the best interests of the town.

Reference had been made to the waste of time at the meetings of the Corporation, which had kept away European gentlemen of position and influence, whose presence would be most desirable. He had closely watched the working of the Municipality for the last twelve years, and he was sorry to say that the European residents of the town as a body at the best took very little interest in the business of the Corporation. He generally found the meetings of the Municipality, when personal questions came to the fore, better attended than when lakhs and lakhs of rupees were voted away, on which occasions many of the European Justices were conspicuous by their absence. And he could well understand the reason. The Europeans came to this country as birds of passage, and, as his hon'ble friend expressed it, they had no abiding interest in the land; and so long as they saw that their own wants and comforts were attended to, BABOO KRISTODAS PAL was not surprised to find that they could not afford time to busy themselves with matters which did not immediately interest them. The Europeans in this country were quite willing to give their time to the promotion of public business, if it did not lead to much self-sacrifice; but, as had been pointed out, the municipal debates occupied much time, and as their time was valuable, they could not attend those meetings. But what would you have? Would you have a close borough system, with a view to promote the convenience of a few members of the European community? or would you have the widest publicity for the sake of the hundreds of thousands who were interested in the business of the Municipality? He fully subscribed to every word which fell from his hon'ble friend in charge of the Bill on this part of the subject. He had taken a broad and liberal view of the question, and it was gratifying to BABOO KRISTODAS PAL that his hon'ble friend, as the head of the Corporation, should advocate the widest publicity. If anything was criticised in these debates, it was his own proceedings; and BABOO KRISTODAS PAL fully appreciated the feeling that had prompted his hon'ble friend to advocate

the freest publicity. If the municipal debates unfortunately led distinguished members of the European community to avoid the Corporation, he confessed that that was a matter of deep regret; but in no civilized country was public business of that kind conducted without debates, and the debating of questions meant the employment of a certain quantity of time for their discussion from all points of view.

He thought he had touched upon most of the important points which had been urged by his hon'ble friend in his opening speech, and although BABOO KRISTODAS PAL was not prepared to submit a scheme of general election for the municipal local government of Calcutta, he had some ideas of his own on the subject, which he ventured to place before the Council not without the greatest diffidence. He had started with the proposition that there ought to be election and not selection, and, entertaining that view, he proposed that the municipal Corporation of Calcutta should be made self-elective. His plan was this. Let the number of the Justices who were to compose the Corporation be limited or fixed by law. Make it 100, 80, or any number you think reasonable. He might remind the Council that the City of London had a body of 200 Common Councilmen. He would, then, first limit the number of Justices to compose the Corporation, would next provide that one-tenth of them should retire annually or every two or three years, and that the remaining members of the Corporation should elect from amongst the rate-payers successors to those who would go out by rotation,—that was to say, the remaining members should form a sort of Board of Electors. The first election might be made by the present Justices from amongst their own body, or the first members might be nominated by the Government. Thus, if the Council should agree to limit the number to 100, these might be elected from amongst the 153 Justices of which the Corporation now consisted, or the Government might select the first 100, and one-tenth of this body, that is 10, should go out annually, and the remaining 90 should elect successors to those 10 from amongst the rate-payers, and any rate-payer possessing the necessary intellectual qualifications should be considered eligible to election. He would also fix by law the number of representatives of each section of the community, so that there might be no misunderstanding or confusion hereafter. That number should of course be regulated by a consideration of the number of the population of the various sections of the community, of their stake in the city, and of the amount of their contributions to the municipal fund. These were matters of detail. If the general scheme was approved of by the Council, it might be considered in Committee. If such a system of a self-elective Corporation should prove successful, it might be considered hereafter whether the basis of election might not be extended. He proposed the scheme as a tentative measure only, but he was not prepared to propose any amendments at present. If the views which he had ventured to express should meet with any support in Council, he would submit the necessary amendments for the consideration of the Council.

The motion was then agreed to.

On the motion of the HON'BLE MR. HOGG the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

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The consideration of Sections 1 to 4 was postponed.

Section 5 was agreed to.

Section 6 provided that the municipal fund should be applied by the Justices as trustees for the purposes of the Act.

The HON'BLE MR. HOGG moved to add to the section the words "and for such other local purposes as the Justices at a special, general, or quarterly meeting, with the sanction of the local Government, may direct." The reason he proposed the addition was that in his opinion the Justices were now confined too much in regard to expenditure: they could only expend money for purposes of conservancy and the improvement of the town. It frequently occurred that proper and legitimate expenditure which ought to be borne by the Municipality was unable to be done owing to the wording of this section, which was taken from the law as it now stood. It was of course desirable that the Justices should be prevented from expending money upon objects which did not fall within the legitimate concerns of the town, but such a check he proposed to impose by making all expenditure sanctioned by the Justices at a special, general, or quarterly meeting subject to the sanction of the local Government.

The HON'BLE BABOO KRISTODAS PAL said he considered it his duty to oppose the amendment. He thought the power of the Justices to expend money could not be too much guarded. He had just now alluded to the extravagance which sometimes characterized the operations of the Justices, and if this additional power were vested in them, he feared it would lead to considerable waste of the hard-earned money of the tax-payers. His hon'ble friend had said that sometimes the Justices themselves regretted their want of power to expend money for what they considered legitimate objects. BABOO KRISTODAS PAL was not aware that the Justices had found themselves fettered from granting money for a single object which properly came within the legitimate scope of the Municipality. The only question which he remembered to have been raised was in connection with the reception of His Royal Highness the Prince of Wales, but that was an exceptional case, and by a stretch of the law provision had been made by the Justices for the purpose. But if the desire of his hon'ble friend for the introduction of the words he proposed were acceded to, BABOO KRISTODAS PAL could not conceive the variety of subjects that might be brought within this drag-net. As his hon'ble friend was well aware, the municipal fund was charged with a very heavy debt, the interest and sinking fund for which was nearly equal to the ten per cent. house-tax, or ten lakhs per annum. The Justices had, besides, an expensive establishment, the drainage works were not completed, and required a further expenditure of more than thirty lakhs. The water-supply was insufficient and might have to be doubled up. So that the legitimate wants of the town could not be met from the funds available, and he was of opinion that it would be a prostitution of the power of the Justices if they were permitted to apply their funds at their discretion, of course with the sanction of the Government, which, as experience showed, could be easily obtained, for objects not directly connected with the health and comfort of the people.

The HON'BLE MR. HOGG said he could not agree with the objection which had been urged. He would call to the recollection of the Council what

occurred in 1866, when paupers were pouring into the town and the Justices were unable to make any grant in order to assist in supporting the famished stricken people. Surely, even looking at the matter as a question of sanitary protection of the inhabitants of Calcutta, that was a fair subject of expenditure. Again, there was another project just started, namely, for the establishment of a zoological garden. That, in his opinion, was also a fit subject of municipal expenditure. The amendment did not propose to impose any expenditure upon the Justices arbitrarily: it left the initiative to them, and then placed a check upon their discretion by requiring the sanction of the local Government. Surely the Legislature could trust the Justices, when controlled by the sanction of the local Government, to make expenditure for local purposes. For these reasons he trusted the Council would adopt the amendment, and pass the section as proposed to be altered by him.

The Hon'ble Mr. Schalch said he certainly thought the purposes to which the municipal fund might be applied should be distinctly stated in the Act. They had seen that his hon'ble friend considered the proposed zoological gardens a fit subject for municipal expenditure. The garden might be an improvement to the neighbourhood of the town, but Mr. Schalch did not think that the establishment of a zoological garden was a purpose for which we could compel the rate-payers to pay. He thought the words in the law "for the improvement of the town" should serve for all necessary purposes. He would ask the Council not to insert any general clause authorizing expenditure, but to confine the power of expenditure to such special purposes as were strictly necessary to the wants of the town.

The Hon'ble Baboo Juggadanund Mookerjee said, it appeared to him that the amendment was not only reasonable, but necessary. The reason why he thought it necessary was that it gave power to the Justices, who had the general control over the municipal fund, to do as they pleased, and it was they only, with the sanction of the Government, who could apply the municipal fund to any particular purpose. The control which the Justices at present possessed over the municipal fund they would retain, and the additional power of expenditure which was proposed to be given to them would be subject to the check of the local Government. Under these circumstances he would support the amendment.

After some further conversation, the Council divided:—

Ayes.	*Noes.*
Hon'ble Baboo Juggadanund Mookerjee.	Hon'ble Baboo Kristodas Pal.
„ Mr. Reynolds.	„ Baboo Doorga Churn Law.
„ Mr. Hogg.	„ Mr. Brookes.
„ The President.	„ Mr. Dampier.
	„ The Advocate-General.
	„ Mr. Schalch.

So the motion was negatived, and the section agreed to.

Section 7 related to the appointment of the Chairman, and provided that he should be "removable" by the local Government if his removal were recommended by a resolution in favor of which not less than two-thirds of the Justices present at a special general meeting should have voted.

The HON'BLE BABOO KRISTODAS PAL moved the substitution of the word "removed" for "removable." If a majority of two-thirds of the Justices recommended the removal of the Chairman, he thought that his removal should be made absolute, and not left to the discretion of the Government. When the Chairman should forfeit the confidence of two-thirds of the Justices, surely it would not be right to force him upon them.

HIS HONOR THE PRESIDENT explained that the adoption of the amendment would make a great difference in the tenure under which the office was now held, as it would make the Chairman removable by the Justices, whereas at present he could only be removed by the Government.

The HON'BLE BABOO KRISTODAS PAL observed that he proposed the amendment in order to give effect to the vote of two-thirds of the Justices, for when there should be such a decisive majority the Government ought to act in conformity with it.

The HON'BLE MR. HOGG thought that as the Chairman was appointed by the Government, he ought to be removed by the Government, and the law should not make him removable even by the unanimous vote of the Justices.

The HON'BLE MR. SCHALCH considered that the Chairman should not be removable by the Justices: it would be inconsistent with the due discharge of the duties of his office if he were liable to removal by a bare majority.

The motion was negatived, and the section passed as it stood.

Section 8 provided for the appointment of a Vice-Chairman.

The HON'BLE MR. HOGG moved the insertion of the words "for such period as they may think fit" after "appoint" in line 4. He said the amendment would enable the Justices to fix the period during which the nominee should hold the office of Vice-Chairman. It might occur that a gentleman advanced in years would be nominated, and it would be advisable not to appoint him for life, and to throw on the Justices the disagreeable duty of compelling him to retire on account of old age. He thought it would be well for the Justices in such cases to recommend to the Government to appoint such an officer for a fixed term of years, and it would be optional with the Justices to re-nominate him.

The motion was carried, and the section as amended was agreed to.

In Section 9 an amendment was moved by the Hon'ble Mr. Hogg and carried with the object of giving the Government a general supervision over the appointment of the chief officers of the Municipality.

Section 10 provided that the Chairman might hold certain other specified offices in addition to the office of Chairman.

The HON'BLE MR. HOGG moved the addition of the following words to clause (*b*)—"and may perform such other duties as the local Government may from time to time assign to the Commissioner of Police." He need hardly point out that, as Commissioner of Police, the Chairman was frequently called upon to perform other duties besides those specified in the section, such as Visitor of the Presidency Jail and President of the Commission for the Inspection of Boilers. The question had arisen how far it was legal for the Chairman to perform such duties, and he proposed this amendment to remove doubts.

After some conversation as to the advisability of postponing the consideration of the section with reference to the constitution of the Municipality, and the separation of the offices of Commissioner of Police and Chairman of the Justices urged by the Hon'ble Kristodas Pal, the motion was agreed to.

The HON'BLE MR. HOGG also moved the adoption in clause (*d*) of the same section (which provided that the Vice-Chairman might be appointed to hold any other office in addition to his own), of an amendment with the object of making the sanction of the local Government necessary before the Vice-Chairman could be appointed to any other post by the Justices.

The motion was carried, and the section as amended was agreed to.

Sections 11 and 12 were agreed to.

Section 13 related to the appointment, remuneration, and removal of subordinate officers.

The HON'BLE BABOO KRISTODAS PAL moved the insertion, after the word "meeting" in paragraph 3 of line 5, of the following words, "and the dismissal of officers of the Justices in receipt of monthly salaries below Rs. 200 shall be reported to the Justices in meeting." Under the present law it was left to the Chairman to appoint or dismiss officers with salaries under Rs. 200, but their appointment and dismissal were not to be reported to the Justices at meeting. He thought it advisable that the Chairman should be required to report the dismissal of such officers. There was an appeal to Government from the acts of departmental heads dismissing Government servants with salaries much less than Rs. 200, but the fate of subordinate municipal officers was left absolutely to the pleasure of the Chairman. He did not believe that the acts of the Chairman in this respect would be ordinarily or unreasonably interfered with; but if there was any glaring case of injustice, it was much better that the Chairman's power should be curtailed than that injustice should be done.

The HON'BLE MR. HOGG thought it was not desirable to weaken the hands of the executive. The subordinate officers of the Municipality must look to their chief alone, and if he had to report the removal of such officers to the Justices, it might give rise to undesirable and disgreeable discussions between the Justices and their Chairman.

The HON'BLE MR. SCHALCH thought that the Chairman should have full power to remove any subordinate officer with a salary under Rs. 200. An appeal to Government, which consisted of one or two individuals, was quite a different thing.

The motion was put and negatived.

Section 14, empowering the Justices to grant leave of absence to their officers, was agreed to with a verbal amendment.

Sections 15 to 30 were agreed to.

Section 31 related to the mode of making contracts.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words at the end of paragraph 2—" and no such contract shall be made without inviting tenders thereon, and without the approval of a Committee of the Justices."

The HON'BLE MR. HOGG considered that it would be detrimental to the despatch of business if any petty contract above Rs. 500 in value were to be subject to the inviting of tenders and approval of a Committee of Justices.

The HON'BLE BABOO KRISTODAS PAL said that after the discussions about contracts which had been going on, he thought the hon'ble mover would be the first to accept the amendment which was now proposed. The law required two other Justices besides the Chairman to sign every contract above Rs. 500, but as the business was now transacted, they simply did so *pro formâ*. By way of illustration of the manner in which contracts were given away by the Justices, he mentioned that the contract for the construction of four new filter tanks at Pulta at a cost of a lakh and a half of rupees had been, he was told, settled by private arrangement without inviting any tenders from the public.

The HON'BLE MR. DAMPIER observed that if the amendment was passed as it stood, no doubt there would be room for the objection that in some instances it would not be possible to postpone matters by inviting tenders. He thought that these petty contracts would be practically engineering details; it seemed that there would be such contracts in the nature of things which need not be submitted to competition and the decision of a Committee of Justices.

The HON'BLE MR. HOGG said that it would depend upon what was held to be a contract; if, for instance, petty engagements with masons to carry out small sections of the drainage works did not come within the meaning of the term "contract," he would have no objection.

The HON'BLE THE ADVOCATE-GENERAL suggested that the amendment should be agreed to subject to the raising of the minimum amount of the contracts referred to from Rs. 500 to Rs. 1,000.

The suggestion was adopted, the amendment carried, and the section as amended agreed to.

Sections 32 and 33 were agreed to.

Section 34, which related to the budget of expenditure, was passed with the addition, on the motion of the HON'BLE MR. HOGG, of the following proviso:—

"Provided that nothing in this section shall preclude the Justices in meeting from sanctioning expenditure not provided in the budget."

Section 35 was agreed to.

Section 36 was carried with the omission, on the motion of the HON'BLE MR. HOGG, of the following words:—"The Justices in meeting, other than an ordinary meeting, subject to the sanction of."

Sections 37 to 54 were agreed to.

Section 55 was passed with a verbal amendment.

Sections 56 to 64 were agreed to.

The Council was adjourned to Thursday, the 18th instant.

Thursday, the 18th November 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble Baboo Kristodas Pal.

CALCUTTA MUNICIPALITY.

The Hon'ble Mr. Hogg moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of its clauses.

The motion was agreed to.

Section 65 provided for the levy, amongst other rates and taxes, of a water-rate not exceeding six per cent. when the houses and lands were situated in streets supplied with filtered water, and not exceeding five per cent. in other parts of the town.

The Hon'ble Mr. Hogg explained that the 6 per cent. rate could only be levied in streets which were supplied with filtered water, as provided in the Act: that was to say, that no portion of the street should be at a greater distance than 150 yards from a stand-pipe. The object the Committee had in view, in raising the tax in certain cases from 5 to 6 per cent., was to increase the supply of water, which was acknowledged to be insufficient. It was the earnest desire of the Justices to double the supply, and they would not be able to do so unless they were authorized by legislative enactment to raise the rate. At present the Justices had, for the following year, made arrangements for, in a measure, providing the town with a more plentiful supply by increasing the number of filters at Pulta. But it was expected that sooner or later the supply would have to be doubled, and what was proposed to be done was only one step in that direction.

The Hon'ble Baboo Kristodas Pal moved the substitution of "five" for "six" in paragraph one, clause (*b*), line one. He said that in Select Committee they had agreed to a rate of 6 per cent., because the information then before them showed that without the additional 1 per cent. it would not be practicable to carry out any extension of the water-supply. But the subsequent increase in the assessment of lands and houses in the town had brought in a large accession of revenue, about Rs. 65,000 for 5 per cent., and he believed that when the whole town should be re-assessed, the yield would be much greater. At present there was an increase of about Rs. 58,000 for 4½ per cent., and on referring to the

budget for next year, he found that the Justices were enabled, after providing for interest, sinking fund, and working charges, to set apart Rs. 45,000 for extra works, viz. Rs. 30,000 for extension of the water-supply, Rs. 10,000 for the flooring of Pulta tanks, and Rs. 5,000 for additional hydrants, and all that with the rate proposed to be fixed at 4½ per cent. And if we took the other half per cent., the total addition to the water-supply revenue, over and above the usual yield of that tax, would be about one lakh and ten thousand rupees. He did not therefore think it fair to increase the maximum of the water-rate from 5 to 6 per cent. He believed that the arrangements already contemplated for the increase of the filter tanks at Pulta, to which his hon'ble friend had referred, coupled with the additional supply of the Chandpal Ghât scheme, would, to a great extent, meet the wants of the town; but if the new filters would not completely meet the want expressed on all sides for an additional supply of water, the funds which would be derived from the levy of the full 5 per cent. rate would enable the Justices to go on further increasing the supply. If, however, notwithstanding the large accession of revenue by increased assessment, the Justices still found the funds at their disposal insufficient to meet the demand, it would then be time to consider whether the rate should be increased.

The Hon'ble Mr. Schalch said this was a matter in which he took a great interest. The demand for the supply of water had very largely increased. The water-supply scheme was originally constructed to meet a demand of 6½ millions of gallons a day; but the demand had far exceeded that quantity. The consequence had been that although by good management the water supplied had been somewhat in excess of that quantity, or about 7½ millions of gallons a day, the demand still exceeded the supply, and to meet that further demand considerable expense had been incurred by the Justices in enlarging the supply of unfiltered water from Chandpal Ghât; consequently the additional supply of unfiltered water had led to an expense of from 4 to 5 lakhs of rupees beyond what was expected, and must be paid from increased taxation. In the same way it had been found necessary to increase the number of filters at Pulta at a cost of Rs. 1,50,000, and the two sums together would amount to from 5½ to 6½ lakhs of rupees, for which additional interest would have to be paid. The interest on 6 lakhs at 6¼ per cent. would be about Rs. 40,000 of annual increased interest. The hon'ble member who had last spoken had alluded to the increased revenue from increased assessment. Mr. Schalch was assured that the increase from revised assessments would be only about Rs. 40,000, so that an increase of revenue of Rs. 40,000 would but cover the increase actually incurred for interest by the Justices. There was no reason to suppose that the demand for water would remain as at present. The demand was increasing every day. More houses were being brought in connexion with the mains, and year after year the demand would continue to increase. Therefore they might safely say that even with the increased revenue received from increased assessment, the water-supply fund would stand on no better footing than before. Therefore he felt quite sure that a rate of 5 per cent. would not hereafter prove sufficient; and it would be a great pity if we did not take the present opportunity of giving the Justices

a sufficient margin of taxation to meet future demands. It would be entirely within their discretion to impose the additional rate or not.

The Hon'ble Baboo Kristodas Pal said the hon'ble member who had just addressed the Council seemed to think that the interest on the capital of the Chandpal Ghât scheme was not covered by the present revenue, and that the remaining half per cent. would be required to meet it. But Baboo Kristodas Pal would beg to remind the hon'ble member that the budget of 1876 covered all charges, interest, sinking fund, working expenses, and the cost of new works to the tune of Rs. 45,000. The rate was now taken at $4\frac{1}{2}$ per cent., so that there would still be a margin of half per cent. if the maximum were fixed at 5 per cent., and that half per cent. would bring in about Rs. 60,000, taking 1 per cent. to yield Rs. 1,18,000. Taking, then, Rs. 60,000 and the extra charges incurred in the present budget, which were not of a recurring nature, an additional revenue of more than a lakh of rupees from 5 per cent. water-rate would be available to the Justices.

The Hon'ble Mr. Hogg observed that the present rate was sufficient to cover all existing expenditure, but he thought the legislature should look ahead and provide for the future wants of the town. If they desired to increase the water-supply, the present rate would not be sufficient.

His Honor the President said he would ask the Council to bear in mind that this rate was not to apply to the whole town, but only to those particular streets in it which were provided for in the manner specified in Section 106. In those streets the Justices had to do a great deal of work at a very great expense, which afforded great conveniences to the householders in those streets, and must save them a certain amount of domestic expenditure. Then he would ask the Council to consider that it was not obligatory on the Justices at once to impose this increased rate. If, as the hon'ble member on the left (Baboo Kristodas Pal) considered, the present rate was sufficient to provide for the wants of all the inhabitants, then the enhanced rate need not be imposed, and His Honor presumed the Justices would not impose it. Possibly the arguments addressed to the Council would be addressed by his hon'ble friend to greater effect at a meeting of the Justices, and he would be able to convince them that the increase was not, under present circumstances, required. But still the question remained whether the present opportunity should not be taken to take power to increase the rate if circumstances should render that course necessary. They all knew the immense importance of supplying the city with pure water. Notwithstanding all that might be said to the contrary, none of them doubted that this supply had been conducive to the public health. They also knew that the present rate was barely sufficient even within a certain limited area of the town, and that sooner or later additional expense must be incurred if all the poorer inhabitants of the town were to get the benefit of the water-supply. Sooner or later there must be increased expenditure. Either there must be increased expenditure, or a large portion of the inhabitants, particularly the poorer portion, must be deprived of the inestimable benefits of a pure water-supply. That seemed to be the whole horns of the dilemma, either the one or the other, and it seemed to him best to adopt the former alternative.

At the same time he quite agreed that the Council should avoid all additional taxation which they could possibly avoid. Therefore he hoped, if this increased rate were passed, the Justices would exercise the greatest caution and consideration in imposing additional taxation. But if such imposition should become absolutely necessary, there was no alternative but to ask the Council to give the power to impose this increased rate.

The Council then divided:

Ayes 4.	*Noes* 6.
The Hon'ble Baboo Kristodas Pal.	The Hon'ble Mr. Brookes.
The Hon'ble Baboo Juggadanund Mookerjee.	The Hon'ble Mr. Reynolds.
The Hon'ble Baboo Doorga Churn Law.	The Hon'ble Mr Hogg.
The Hon'ble the Advocate-General.	The Hon'ble Mr. Dampier.
	The Hon'ble Mr Schalch.
	His Honor the President.

The motion was therefore negatived, and the section agreed to as it stood.

The HON'BLE BABOO KRISTODAS PAL moved amendments in paragraphs 3 and 4 of the same section with the object of making the water-rate payable by the occupier instead of by the owner. He was of opinion that in equity the water-rate ought to be paid by the occupier. Strictly speaking, it was the occupier who derived benefit from the water-rate, and therefore it was right and proper that he should pay it. In another amendment he proposed that the occupier should be charged with the whole of the water-rate. But even if that point was not agreed to, still he was of opinion that the water-rate ought to be paid by the occupier, as he had to pay three-fourths of the rate, and he should be empowered to recover one-fourth from the owner by deduction from the rent paid by him.

The HON'BLE MR. HOGG said he could not agree that the whole burden of the water-rate should be borne by the occupier. As the law stood, the rate was levied from the owner, and he was empowered to levy from his tenant three-fourths of the rate paid by him, which MR. HOGG thought was reasonable and proper. As the introduction of the water-supply throughout the town of Calcutta very greatly benefited his property, the owner should bear the cost of conservancy of the town, such as the watering of streets and the cleansing of drains; it was but fair that the owner should pay the rate for water, recovering three-fourths from his tenant.

The HON'BLE MR. DAMPIER said he should like the hon'ble mover of the Bill to explain why, in his opinion, the owner should pay the water-rate, and not the occupier. If the arrangement was that the occupier was ultimately to bear the burden of three-fourths of the rate and the owner was only to bear one-fourth, why should you ask the man on whom the smaller portion of the burden would ultimately fall to pay the rate in the first instance? Why should you not make the occupier pay the whole rate, and then let him deduct the owner's share of it out of the rent? It seemed to MR. DAMPIER that that was the simplest arrangement.

The HON'BLE MR. HOGG explained that it was very difficult to levy the rates from the occupiers of property, seeing that they constantly moved about,

and in some cases actually left the town before the tax bill could be presented, and therefore a large amount of revenue was lost to the town on account of the police and lighting-rates. Therefore it was thought advisable that the whole onus should be thrown upon the owner, leaving him to collect the tenant's portion at the same time that he recovered the rent from the occupier of his house. It was also thought by very many, and by the majority of the Select Committee, that there would be very much less danger of oppression if the owner were called upon to pay all the rates and subsequently recover from the occupier the rates payable by him.

The HON'BLE MR. DAMPIER said that he understood that the difficulty of collecting from occupiers in consequence of their frequently removing during the currency of the quarter was met with regard to other taxes in the Bill by making them leviable in advance.

The HON'BLE THE ADVOCATE-GENERAL said he would support the amendment. He certainly was not satisfied with the reasons given by the hon'ble mover of the Bill for imposing this rate on owners. It was said that the law now stood so. This Municipal Bill was not only a Consolidation Bill, but also an amendment of the existing municipal law, and the present was therefore a fitting opportunity to make amendments which were required in the interests of justice. With regard to the argument that the principle upon which the water-rate was imposed on the owner was that he benefited by the introduction of a water-supply, as it tended to increase rents, he would say that the owners of most houses knew that every tax had a tendency to diminish the rents of houses, and consequently if the tax was put on the ground that it was a benefit to owners, all he could say was that his experience was directly opposed to such a conclusion. He would support the amendment, although it was opposed to the principle of the former Municipal Act.

The HON'BLE MR. HOGG said that if the Council would agree to allow the police, lighting, and water-rates to be all collected in advance, he would not oppose the amendment.

The amendment was then carried, and the section as amended was passed.

Section 66 was agreed to.

The HON'BLE MR. HOGG said they should now consider the principle whether occupiers of houses should not have the right to deduct from the rent, in the event of their paying the water-rate, the portion appertaining to the owner, one-fourth, which may have been paid by them in advance. As the Bill stood, the rate was collected from the owner, and he had the right of recovering three-fourths of it from the occupier. In consequence of the amendment which had just been accepted, every one of the sections in this Part would require formal alteration.

The HON'BLE BABOO KRISTODAS PAL said, one of the amendments of which he had given notice involved the principle that the whole of the water-rate ought to be paid by the occupier. Under the existing law three-fourths were paid by the occupier and one-fourth by the owner. He considered that the principle on which this division of the incidence of the water-rate had been made was unsound in theory and inequitable in practice. The water-supply had been

introduced immediately for the benefit of the occupier, and it was but fair and just that the occupier should bear the full burden, just as the lighting of the town was intended for the benefit of the occupier, who paid the lighting-rate. The police also was for the protection of the occupier, and he paid the police-rate. For the same reasons he thought the whole of the water-rate should be borne by the occupier, who received a *quid pro quo*. It had been urged that water was used by the Municipality for general purposes, such as watering the streets and the conservancy. He could not understand that the occupier had less interest in conservancy and the watering of streets than the owner. In fact the occupier had a greater interest than the owner in the whole of the improvements carried on by the Municipality. It might be said that these improvements enhanced the value of house property which undoubtedly benefited the owner, and that therefore he ought to contribute towards the cost of the improvements. But the owner was paying, or under the law was liable to pay, half of the municipal rates; BABOO KRISTODAS PAL meant the house-rate at the maximum rate of ten per cent. Under the present law it was true he had been made to pay one-fourth of the water-rate, but that, he submitted, was unjust. In discussing this question of the water-rate, the Council ought to remember the class of people who bore the greater part of the burden. It was the class of owner-occupier, who formed the majority of the population of the town: the bulk of the native population, nine-tenths, were owner-occupiers, and they paid the whole of the water-rate. So that, strictly speaking, there would be no change made in respect of this class of occupiers. With regard to those occupiers who occupied houses belonging to others, if they derived the whole and immediate benefit of the water-supply, it was fair that they should be made to bear the whole burden. His motion would be that the whole of the water-rate be made payable by the occupier.

The HON'BLE MR. *Hogg* said he confessed that the arguments advanced did not dispose him to accept the proposal that the whole of the water-rate be payable by the occupier. The owner benefited by the water-rate, as it increased the value of his property, and it seemed to him therefore that the owner should pay his quota of the rate. For these reasons he would oppose the motion.

The HON'BLE THE ADVOCATE-GENERAL said he would support this proposition, as he had supported the previous amendment. It appeared to him that no sufficient reason had been advanced to make the owner of the house liable for any portion of the water-rate. It had been said vaguely that the laying down of water benefited landlords. If it benefited landlords, it must produce a return in some substantial way, such as an advance of rent. He had tendered his experience on the subject of rents; further evidence might be obtained; and he believed it would be found that increase of taxation diminished rent. The law imposed a portion of the water-rate on the owner, and if only a portion was imposed, would the hon'ble member inform him on what principle one-fourth was imposed? Why not one-eighth or one-twelfth, or the whole? If the owner derived a certain amount of benefit, let us have the measure of that benefit; but one-fourth was an arbitrary measure, supported on no data.

With regard to the argument that for purposes of conservancy and other similar purposes to which water was applied, the owners of houses should pay, he would submit that since water was laid down and the rate levied, the landlord had to repair his house as often as he did previously, and had to pay a somewhat onerous house-rate. He could not see that any benefit accrued to the landlord; but it was clear that conservancy purposes, such as watering streets, abundantly conduced to the benefit of tenants who lived in particular streets. If legislation was conducted on principle, there was no reason why the landlord should pay a portion of the water-rate any more than the lighting-rate. The one benefited the streets in the day; the other at night by lighting the streets, and by preventing the commission of acts which might otherwise take place. He had often thought on the subject, and had tried to find out on what principle the existing law was based. He could discover no principle. The practice was arbitrary, and should, he thought, be discontinued.

The Hon'ble Baboo Doorga Churn Law said he did not see why the owner should be saddled with a quarter of the water-rate. He derived no benefit from it, the whole benefit being derived by the occupier; and those who consumed the water and derived benefit therefrom ought to pay the whole of it. As to the opinion that rents had risen by the introduction of the water-supply, in his knowledge and experience he had not seen that this had been the case, and it was quite inexplicable to him how this one-fourth had been imposed on the owner.

The Hon'ble Mr. Dampier said, without committing himself to vote one way or the other, he wished to ask for information. It was said that the supply of water did not enhance the value of rent. But with respect more particularly to European residents, he would ask whether it was not the case that houses in the suburbs were now less sought after than before, because filtered water was not procurable there? It would be found that out of a given number of people whose avocations bound them to Calcutta, a larger proportion now elected to reside in Calcutta. In that way there was a larger number of competitors for houses in Calcutta, and did competition mean increase in rents or not?

The Hon'ble Mr. Hogg said he was just about to make the same remark. It was an undoubted fact that since the water-supply, houses in Calcutta were sought after considerably more than they used to be before, and owners more easily found tenants for their houses.

He would also join issue with the learned Advocate-General as to whether rents had not considerably increased. That had been demonstrated as an absolute fact. The late assessments were made in 1864. The revised assessments had been raised nearly 10 per cent., which proved necessarily that owners realized more from house rents. Consequently, it was proposed next year, instead of keeping the house-rate at 9 or 10 per cent., to impose an 8 per cent. rate, owing to the considerable increase in the value of property, mainly attributable to drainage, and also to the pure water supplied to the whole town. This was a fact which could not be controverted, and could be proved. He certainly considered that owners were being much benefited by the introduction of water, and that they

should pay a reasonable amount by way of contribution for the water used for conservancy, the cleaning of drains, and watering of streets, and it seemed to him that the Council should not impose the whole of the tax and put the burden entirely upon the occupier. Another argument was that the water-supply had been introduced now for more than five years, and owners of property had doubtless fixed the rent of their houses on the supposition that the landlord was to pay his share of the tax; and MR. HOGG presumed that if we relieved owners from the burden of the water-rate they would not reduce their rents consequent on such additional taxation being imposed on the occupier. He would therefore move by way of amendment that the principle be accepted that the occupier be entitled to recover a portion of the water-rate from the owner by deduction from rent.

The HON'BLE THE ADVOCATE-GENERAL observed that the fact that the assessment of a house had been increased was not conclusive, nor even sufficient, evidence of the fact that the rent had increased. The assessment was not upon the rental, but on the reasonable amount upon which a house might be expected to be let. For the above reason the experience of the Chairman of the Justices did not satisfy the ADVOCATE-GENERAL that his representation was not correct—that, in point of fact, houses had not increased in letting value.

The HON'BLE BABOO KRISTODAS PAL observed that the increase in the assessment was also due to the construction of new buildings.

HIS HONOR THE PRESIDENT said it appeared to him, as the learned Advocate-General had said, difficult to fix a principle which was not more or less arbitrary. Even assuming that on the principle of the police and lighting-rate no portion of the water-rate ought to be borne by the owner, nevertheless, allowing even that, was it not reasonable to say that on the same principle that we imposed on the landlord the house-rate, should we not impose upon them some proportion of the water-rate also? What were the grounds on which the house-rate was put upon the owner? He presumed this, that the proceeds of the house-rate were devoted to improvements which permanently added to the value of property. If that was the ground upon which that rate was imposed, did it not equally apply to a portion of the water-rate? Did not the introduction of a water-supply improve the place generally? Did it not add to the general value of property? He presumed it did; and if so, a portion of the water-rate should be borne by the owner on the same ground as the house-rate. Furthermore, was it not a fact that the water-supply did save a certain amount of domestic expenditure? Did it not benefit the occupier, and was not the occupier willing to pay slightly more for a house which had the advantage of a water-supply, than for a house which had not that advantage? It might not be a very great difference, but some slight difference it must make in the long run. On these grounds, despite the argument of the learned Advocate-General, HIS HONOR thought a small proportion of the water-rate was justly chargeable on the person whose property was benefited. For the rest he agreed with the Advocate-General, that on the ground on which we imposed on the occupier the burden of the police and lighting-rates, we should impose upon him the greater portion of the water-rate. So he ventured to suggest that the existing

law, which imposed three-fourths of the water-rate on the occupier and one-fourth on the owner, did fulfil a certain rough sort of justice. If it were asked by what estimate did you make out the exact proportion of three-fourths and one-fourth, it would be almost impossible to say. That difficulty was necessarily incidental to all legislation. The whole principle was that the greater portion was charged to the one, and the less to the other. But when you came to define the exact proportion, you must take a rough and arbitrary line: without an arbitrary line all legislation would be impossible.

The HON'BLE BABOO KRISTODAS PAL'S motion, that no portion of the water-rate should be chargeable to the owners of houses and lands, was put and negatived.

The HON'BLE MR. HOGG'S motion, that the occupier be entitled to recover from the owner a portion of the water-rate, such recovery to be made by means of deductions from the rent payable by the occupier to the owner, was then put.

The Council divided:—

Ayes 5.	*Noes* 5.
The Hon'ble Baboo Kristodas Pal.	The Hon'ble Mr. Reynolds.
The Hon'ble Baboo Doorga Churn Law.	The Hon'ble Mr. Hogg.
The Hon'ble Mr. Brookes.	The Hon'ble Mr. Dampier.
The Hon'ble Baboo Juggadanund Mookerjee.	The Hon'ble Mr. Schalch.
The Hon'ble the Advocate-General.	The Hon'ble the President.

The numbers being equal, the President gave his casting vote with the noes.

So the Hon'ble Mr. Hogg's motion was carried.

The HON'BLE BABOO DOORGA CHURN LAW moved that one-eighth of the water-rate be chargeable upon the owners of houses and lands.

The HON'BLE THE ADVOCATE-GENERAL said, as there was no measure for finding out the degree of advantage derived by the owner from the supply of water, and as the benefit derived by the landlord was comparatively very small, he did not see why one-eighth should not be substituted for one-fourth. He would therefore support the motion.

The HON'BLE MR. SCHALCH observed that when the municipal law was passed, this question was very much discussed, and at that time one-fourth was taken to be the proper proportion. He did not see any reason why the Council should now alter it.

HIS HONOR THE PRESIDENT observed that there was one argument in favour of the one-fourth rate, which first fell, he thought, from the hon'ble mover of the Bill, viz. that that rate already existed, and on the strength of it, and on that understanding, current arrangements between the landlord and tenant already existed in the city. Perhaps that was one argument in favour of the one-fourth rate.

The HON'BLE BABOO KRISTODAS PAL supported the amendment. The present proportion had been made very arbitrarily. He could not perceive any principle upon which it was founded. There was, however, some principle upon which the amendment was based. The Chandpal Ghât scheme cost the

Justices about Rs. 40,000. Now, one-eighth of the water-rate would cover more than that sum. The water obtained from the Chandpal Ghât engine was used for street-watering and the flushing of drains. Those were the only two objects for which the owner was considered liable, and the proportion of one-eighth, as he had said, would cover more than the expenditure incurred for those purposes.

The HON'BLE MR. HOGG said it was true that the Chandpal Ghât water was used for watering the streets and for drainage, yet it was equally true that a considerable portion of the street-watering was done by means of filtered water.

The HON'BLE BABOO DOORGA CHURN LAW's amendment was negatived.

HIS HONOR THE PRESIDENT then put the question that one-fourth of the water rate be recovered by the occupier from the owner by deduction of rent.

The motion was agreed to.

The consideration of Sections 67 to 80 was then postponed.

Section 81 provided how the annual letting value was to be ascertained.

The HON'BLE BABOO DOORGA CHURN LAW moved the insertion of the following words at the end of the first paragraph of the section—"and when the rent realized is proved by documents and accounts, the same shall be deemed to be the annual value of such house or land." He said that there were cases in which agreements had been produced, and yet the Municipality had thought proper to assess the owner at a higher value than the rents stated in the lease. The object of this amendment was to prevent such an anomaly.

The HON'BLE MR. HOGG said he was unable to accept the amendment. If it became a part of the substantive law that whatever amount was entered in the lease should be conclusive proof of the rent that was derived, it might possibly give rise to private understandings between unscrupulous landlords and tenants, and the whole rents would not be stated in the lease. It was to prevent collusion that the law had been so worded. It was the law which prevailed in England, and it did not seem desirable, in this country, to make the measure of taxation depend upon the amount of rent actually payable under a lease. Unless they had reason to suspect collusion, the Justices always accepted the amount of rent entered in a lease as conclusive proof of the letting value.

The HON'BLE BABOO DOORGA CHURN LAW said that he himself, from personal experience, knew that leases of which there was not the slightest doubt were not accepted. If there had been fraud in the matter, the municipal officers would of course be quite justified in rejecting such leases, but to his certain knowledge they had done so in many *bonâ fide* cases.

The HON'BLE THE ADVOCATE-GENERAL observed that the assessments were for three years, and many leases were for one year. It was possible that the Municipality might consider that on the expiration of a lease for a year, a higher rent might be obtained. It was not only in cases of fraud or collusion that the Justices were entitled to reject a lease, but also in cases in which they had reason to believe that a higher rent could be obtained.

The HON'BLE BABOO KRISTODAS PAL remarked that the cases to which reference was made were cases of short leases for a year or nine months, and

the Justices thought that as the assessments were for three years, they had a right to reject short leases as not affording sufficient evidence of the letting value. At the same time, great complaints existed about the arbitrary manner in which the assessments had been raised; that, however, was not the place to discuss that question.

The HON'BLE MR. DAMPIER observed that he thought the amendment could not but be rejected in the form in which it stood. If the Council passed this amendment, all he could say was that when he renewed his lease, he should give a handsome bonus to his landlord and take his house on a rental of one-tenth its letting value. He should then be able to show his lease as proof of the rent paid, and the real fact would be that the landlord and tenant would settle the matter between themselves, so as to evade the taxes under the protection of this provision of the law.

The HON'BLE MR. SCHALCH said he remembered assessing the property of a very wealthy firm. He believed they paid a rent of Rs. 400 on what was known as a repairing lease, and the consequence of that was that the rent was very low, the lease being for a very long period. When it came before the Justices, they looked to the letting value of the house by a comparison with the corresponding buildings, and they raised the rent to Rs. 1,500, and the occupier admitted that he could not say that the decision was wrong. The Port Commissioners strongly objected to the Justices being vested with the final decision in cases of assessment, and on their representation a condition had been imported into the law to allow an appeal to an independent body, namely the Small Cause Court.

HIS HONOR THE PRESIDENT said he felt it his duty to say, with all respect to the hon'ble mover of the amendment, that he earnestly hoped the Council would not accept the amendment. It would afford very great temptation to many people to enter into collusive transactions. It was very important that all matters of taxation should be so regulated as to avoid any temptation for the evasion of just dues, or a tendency to demoralization, and on that ground he thought the proposed provision would have a very bad effect.

The amendment was then, by leave, withdrawn.

The HON'BLE MR. SCHALCH said, in the third paragraph of this section, it was provided that all the unoccupied lands, roads, and slopes of the Port Commissioners, should be rated at the rent for which they might reasonably be expected to be let, in the same manner as if they were used for other than public purposes, and belonged to persons other than a public body. He might say that the Port Commissioners had no objection at all to that provision, so far as related to all unoccupied land which they could reasonably expect to get occupied. The form, however, in which the provision was worded would unjustly impose a heavy expenditure upon the Port Commissioners. Some time back the Port Commissioners had purchased land from Ahcereetollah Ghât as far as the Chitpore canal for the purpose of affording facilities for the landing and shipping of goods from native boats; but a considerable portion of the land so purchased was devoted by the Port Commissioners to the formation of two roads at an expenditure of about 10 lakhs of rupees. The roads in question had been thrown open to the use of the public, and

therefore could not be appropriated to any other purpose. These roads were a considerable improvement to the town, and greatly improved the old bank of the river, which was very much broken up, and they afforded increased ventilation to a portion of the town which was thickly occupied. The Port Commissioners thought, therefore, that as the Municipality had never been asked to subscribe a penny towards the construction of these roads, and they afforded great advantage to the town, the Port Commissioners should not be called upon to pay any rate for that part of their property. It might be said that by the destruction of houses the Justices had lost the assessment thereon fixed. On the 1st January 1872, when the Port Commissioners took possession of the river bank, the taxation on their property amounted to Rs. 1,35,000; on the 1st January 1875 the assessment had risen to Rs. 3,40,000, an increase due almost entirely to improvements made by the Port Commissioners; and the additional improvement now made had largely increased the value of property in the neighbourhood. Land which used to sell for Rs. 700 a cottah, was now selling for Rs. 1,500. Therefore the loss of revenue from the land occupied by these roads would very shortly be made up by the increased value of land and the improved style of houses now being constructed in the locality. He trusted, therefore, that it would not be considered that the Port Commissioners were asking too much in claiming that that portion of their land which had been thrown open as a public road should be declared to be free from all assessment. With these remarks he would move that the following words be added to the section:—

"Save and except the road extending from the northern boundary of the premises occupied by the East Indian Railway Company at Armenian Ghât to the Chitpore Canal, and the road extending from the Chitpore Road to the River Hooghly at Koomartollah Ghât, for a width not exceeding seventy feet and sixty feet respectively, shall be exempted from assessment of any rate under this Act."

The Hon'ble Mr. Hogg said, looking at this question in the interests of the town, and to the fact that the two bodies, the Port Commissioners and the Justices, were working for the common good of the town, he thought that the claim of the Port Commissioners was a reasonable one. The road had improved the river frontage enormously, and to all practical intents and purposes, although the road remained the private property of the Commissioners, yet it was a public road to which the public had full access, although the town was not called upon to pay the expense of repairing the road or lighting it. He thought the Commissioners had conferred a great benefit on the town, and that they could not be called upon to pay any tax in respect of these two roads, but he would suggest that the width of the two roads to be exempted from taxation be uniformly fixed at sixty feet each.

The Hon'ble Baboo Kristodas Pal concurred with what had fallen from the hon'ble mover. He considered that the roads in question were a decided improvement, and that the population of the northern portion of the town derived great benefit from it. If the amendment before the Council did not include the slopes from which the Port Commissioners derived a revenue, he was quite willing to support their claim for exemption from assessment for

the roads in question. He might observe that the sides of the road were used by the Commissioners for the storage of goods, and therefore he thought only the portion of the road actually used by the public should be exempted. Perhaps exemption on account of the two roads might be given to a uniform width of 60 feet, instead of 70 feet for one and 60 feet for the other.

The HON'BLE MR. SCHALCH said that any deposit of materials on the sides of the road now existing was only temporary. He thought that for the road on the river side over which the traffic was very great, a width of 70 feet ought to be allowed, and 60 feet for the other. If the width of 70 feet was reduced, it would be necessary to remodel the whole road and the foot-path.

HIS HONOR THE PRESIDENT said, if the Council were disposed to accept the hon'ble member's amendment, they had better take his figures in full reliance of his local knowledge as Chairman of the Port Commissioners; and, furthermore, he thought the Council would do well to accept the principle of the amendment, because the roads in question were made by the Port Commissioners much to the benefit of the town, and they could derive no particular revenue from it. They were roads that were open to the public; therefore HIS HONOR hoped the Council might be pleased to accept the amendment as it stood.

The motion was carried, and the section as amended was passed.

Sections 82 and 83 were agreed to.

Section 84 provided for the reassessment of a house when substantial injury had occurred to it during the currency of any assessment.

The HON'BLE BABOO DOORGA CHURN LAW moved the insertion in line 6, after "civil commotion," of the words "or suffers material depreciation from any cause." He thought that while the Municipality would benefit by any improvements which had been made, it ought surely to afford relief when property suffered material deterioration. It might be that the house could not be kept in proper repairs for want of means of the owner, and might fall down partly or wholly; in that case, he thought relief from excessive assessment should be given by the Municipality.

The HON'BLE MR. HOGG said he could not accept the amendment. It seemed to him quite sufficient to require the Justices to reduce their assessment when the house had suffered depreciation from the causes specified in the section, viz. fire, a cyclone, the act of God, or civil commotion. Why should the municipal revenue suffer loss if the landlord chose to allow his property to remain out of repair?

The HON'BLE BABOO DOORGA CHURN LAW observed that it was not to be expected that a house-owner would wilfully let his house remain out of repair and suffer depreciation merely to escape taxation. There were many houses in the town which were going to ruin from want of means on the part of the owner to repair it. When improvements to house property were made, the Municipality did not fail to raise the assessment, and why should not a reduction be given on account of depreciation?

The HON'BLE BABOO KRISTODAS PAL said Section 83 provided for reassessment in case of substantial improvements; and to be consistent, the same

privilege ought to be given to the owner to claim a reduction of assessment if there were deterioration in his house from causes over which he had no control. The hon'ble mover of the Bill pointed out that Section 84 provided for such circumstances as fire, cyclone, the act of God, or civil commotion. The question was whether an owner, who had once seen prosperity, but had become subsequently much reduced in position and circumstances, and who having a large ancestral house, which he had not means to keep in good repair, but with which he could not be persuaded to part from a feeling—call it a failing if you will—of attachment to the ancestral hearth and home, a feeling cherished with the greatest tenacity, should be entitled to a reduction of assessment when his house became greatly depreciated from want of due repairs. The Government scrupulously respected the native feeling on this subject, but the tendency of this section would be to force such unfortunate owners to part with their property. He had known ancient families which had been very much reduced by vicissitudes of fortune, but could not shake off their traditional attachment to the ancestral home. He thought that in such cases the deterioration of the value of the property ought to receive due consideration.

The Hon'ble the Advocate-General observed that he could see no objection to the amendment if it were confined to cases beyond the control of the owner, and if that were proved to the satisfaction of the Justices. There might be cases in which deterioration of the value of property occurred in a particular street, and other cases in which the depreciation in value was beyond the control of the owner; in such cases, he could see no objection to affording relief by way of a reduction of assessment.

The amendment having been altered to the effect suggested by the Advocate-General, was agreed to, and the section as amended was passed.

Sections 85 and 86 were agreed to.

Section 87 provided for the inspection and survey of houses for purposes of valuation.

On the motion of the Hon'ble Baboo Kristodas Pal, the section was amended so as to require 24 hours' notice before entry.

Sections 88, 89, and 90, were agreed to.

Section 91 provided for the hearing of appeals from assessments.

The Hon'ble Baboo Kristodas Pal moved the addition of the following words:—"No fee shall be charged for the institution of such appeal, and no costs shall be awarded therefor." He said that when assessment appeals were allowed to the sitting Magistrates no fee was charged, nor was any fee now charged in respect of the appeals heard by a Bench of Justices. He believed that no fee was now chargeable by the Small Cause Court in references by the Justices.

If any fee were charged on assessment appeals to the Small Cause Court, it would be a great hardship to the poor rate-payers. There need be no fear of a large influx of such appeals to the court, for the greater part of the town had been lately reassessed, and the present Bill proposed to extend the currency of an assessment from three to six years.

The Hon'ble Mr. Hogg said, in his judgment the charging of a reasonable fee for the institution of appeals would be a wholesome provision to prevent

frivolous appeals being preferred. He was entirely opposed to an appeal being allowed to the Small Cause Court free of cost. If a person desired to appeal free of cost, he could appeal to the Bench of Justices. If he desired adjudication by an authority independent altogether from the Municipality, he should pay a reasonable fee in order to have the advantage of the superior judicial knowledge of the Small Cause Court.

His Honor the President said he thought it would be better to let the existing law take its course: if the Court thought that the complainant was right and the Justices wrong, they would no doubt give costs against the Justices.

After some further conversation the amendment was, by leave, withdrawn, and the section passed as it stood.

Sections 92 to 107 were agreed to.

Section 108 fixed the pressure at which water must be supplied, and the times during which high pressure should be maintained.

The Hon'ble Baboo Doorga Churn Law moved to substitute the word "ten" for "nine" in line 9, in order that water might be supplied under high pressure from seven to ten o'clock in the forenoon, instead of from seven to nine. He observed that it would be inconvenient to the native community to confine the pressure to only two hours in the morning: 9 o'clock was too early an hour to stop high pressure. He proposed therefore that it should be kept up for another hour, or say until 10 o'clock.

The Hon'ble Mr. Hogg said the only practical objection to the amendment was that at 9 o'clock in the hot weather street watering commenced, and it was found impossible to keep up pressure when street watering began. If the hour was changed to 10 o'clock, then the Justices would probably be compelled to give an insufficient supply of water at a height of fifty feet, or they must postpone the watering of streets to 10 o'clock, which would be somewhat inconvenient.

The amendment was by leave withdrawn.

The Hon'ble Mr. Schalch said, he believed that Mr. Smith, the Engineer who superintended the construction of the water-works, thought it would be almost impossible to keep up high pressure simultaneously throughout the whole town owing to the considerable waste that occurred. In consequence of the difficulty of getting up water to the higher stories of houses, as soon as the water was got up, the servants, knowing that full pressure was got up, stepped into the bath-rooms and left the cocks open. He had himself had two bath-rooms in the house flooded in consequence of the carelessness of servants. Considering the great waste of water that went on in the town, he thought it should be a matter for consideration whether or not power should be given to the Justices to divide the town into sections, and supply each section with water at high pressure for two or three hours together. That was a plan for the adoption of which Mr. Smith was very strongly in favour. Mr. Schalch hoped the hon'ble mover would consider the point.

The Hon'ble Mr. Hogg said, he entirely concurred with the remarks which had fallen from the hon'ble member. The difficulty was that every one was anxious to have water in the early morning, and equally in the evening.

If we supplied water to the European portion of the town in the morning and the natives at a later hour, the natives would have a right to object.

The HON'BLE BABOO KRISTODAS PAL thought the practical difficulties in the way of any such plan would be very great, and almost insurmountable.

After some further conversation, the further consideration of the section was postponed.

Section 110 declared the quantity of water to which a householder should be entitled for domestic use.

The HON'BLE BABOO KRISTODAS PAL moved the omission of this section, which he thought was by far the most important of the sections relating to water-supply. It altered the system of supply adopted by the legislature and in force for the last six years. Hitherto the rate-payers were given to understand that they were to contribute according to the value of their houses, and to get a supply of water without restriction for domestic use. Now it was proposed that the water was to be sold to the rate-payers according to their respective contributions, and that an additional charge should be made for any excess above the regulation quantity. He could understand the principle of this section if the levy of the rate had not been made compulsory—if water-supply had been treated as a commercial transaction only. But when the rate was imposed as a compulsory tax, and when the tax was imposed under the understanding that a full supply of water would be given, he considered that it would be a breach of faith now to introduce the commercial principle by way of supplement to the compulsory tax. He could assure the Council that this section was regarded by the native community with great consternation, and that if it were enacted into law, it would convert the water-supply into a curse instead of a blessing. Since the water-supply had been introduced, the natives had filled up their old wells and tanks, and they would experience great inconvenience if they were now restricted to a scanty supply; and if to that was added the proposal for charging an additional rate for excess supply, it would be imposing a grievous burden upon the poorer classes. Hon'ble members were doubtless aware that the Hindoos for the most part lived in joint undivided families, and that they were generally poor, living from hand to mouth, and that in every one of those houses numbers of individuals lived together and drew water from the same supply. The monthly rental of such houses did not ordinarily exceed Rs. 40 or Rs. 50; the number of souls in a joint family might be twenty. The owner or proprietor in whose name the house was registered would be entitled to a certain quantum according to the scale laid down, and he must provide for the excess quantity at an additional expense. Thus these poor people would not only have to pay a 6 per cent. rate if the maximum were imposed, but must also undergo additional expense for the excess supply which they must have, as the old supply by means of tanks and wells had been discontinued. The rate of one rupee for every 1,000 gallons was also most arbitrary. The actual cost of water did not exceed four annas per thousand gallons, and it was proposed that the Justices should make a profit of twelve annas for every 1,000 gallons for supplying water to those whose money had provided the water-supply.

The HON'BLE MR. HOGG said he did not imagine that the provisions of this section would ever be put in force. But in the face of the wanton waste of water in the town, and more especially in regard to the undivided Hindoo families referred to by the hon'ble member, it was most desirable that the legislature should place it in the power of the Justices, when they saw water wilfully wasted, to place a check upon such waste. The check was a moderate one. It called upon the Justices to undergo a considerable expense in the purchase of a water metre in order to test whether the occupant was taking more than he required. The supply of 1,000 gallons for every rupee of tax paid was a liberal one, and seldom ever need be exceeded. He trusted, therefore, that the amendment would not be carried.

The HON'BLE MR. SCHALCH said the object of this section was to stop the immense waste of water that was going on. It had been arranged that six millions of gallons should be supplied for the consumption of the town. That was raised to seven and a half millions, and the supply was still found to be utterly insufficient. He happened the other day to look out of his house, and he saw a hydrant discharging water to its full extent, and that went on for three days without let or hindrance. It was in thorough working order, but the tap had been left open. He thought that the quantity of water allowed under the section in return for the rate was very liberal, and gave a margin of 20 per cent. He thought that the adoption of the same system was not a hard one in the case of an undivided Hindoo family, and if something of the kind was not done, the waste of water would continue to be enormous. He did not say that the rate for additional water should not be reduced. The net cost was from four to five annas per gallon, and if the charge per thousand gallons were reduced from one rupee to eight annas, there would, in his opinion, be no hardship. The present demand was nothing to what it would be four or five years hence, and he thought they should look to the future as well as to the present.

The HON'BLE BABOO KRISTODAS PAL observed that there were provisions in the Bill for punishing offenders for wanton waste of water which, he thought, were quite sufficient. The greatest waste went on in the streets, and no measures seemed to be taken to prevent it. If you visited any part of the town, you would not unfrequently find the taps open and the water flowing on without hindrance. If such waste went on in private houses the owners or occupiers would be punished. If the object were merely to charge an additional rate in those cases only in which wanton waste should occur and should be proved, that would be consistent; but as the provision stood, it might be enforced at the discretion of the Justices to the great oppression of the people.

HIS HONOR THE PRESIDENT said the hon'ble member's difficulty was that some houses might pay a very small rate and might contain a great many souls. That difficulty might be obviated if the section provided for the payment of a certain rate per head: the Justices would see by the water metre what each family consumed, as also the quantity per head. He thought a check was more required for the European quarter of the town than for the portions inhabited by the poorer classes. The water consumed by the poorer classes was

very small in quantity in comparison with the waste committed by the richer individuals.

The HON'BLE BABOO KRISTODAS PAL remarked that the size of the ferule through which the poor people received water was very small indeed—he believed one-eighth of an inch, through which water came by drops as it were, and which was a sufficient check against waste.

The HON'BLE THE ADVOCATE-GENERAL suggested that the objection might perhaps be met by fixing the rate for surplus water at 2,000 gallons per rupee.

The HON'BLE MR. HOGG assured the Council that the provisions of this section would not affect any of the poorer classes.

The further consideration of the section was then postponed.

Section 111 was agreed to.

The Council was adjourned to Saturday, the 20th instant.

Saturday, the 20th November 1875.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble H. L. DAMPIER,
The Hon'ble STUART HOGG,
The Hon'ble H. J. REYNOLDS,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO DOORGA CHURN LAW,
and
The Hon'ble BABOO KRISTODAS PAL.

CALCUTTA MUNICIPALITY.

ON the motion of the Hon'ble Mr. Hogg, the Council proceeded to the further consideration of the clauses of the Bill.

The consideration of the postponed Section 108, which regulated the pressure at which water must be supplied, was then resumed.

The HON'BLE MR. HOGG said, the Council would remember that the consideration of Section 108 was postponed because the Council was not decided whether it should be passed in its present form. The section called upon the Justices to provide a pressure sufficient to raise water to the height of 50 feet from 7 o'clock to 9 o'clock in the morning, and again in the evening from 5 o'clock to 6 o'clock,—that was to say to provide the high pressure during three hours in the day. For the remainder of the day the Justices were required to provide a pressure sufficient to deliver water at a height of ten feet. The hon'ble member on his right (Mr. Schalch) had pointed out that if not now, hereafter, when the demand for water increased, the Municipality would find it difficult to carry out the provisions of the section, and suggested that the Council should give the Justices power to enable them to divide the town into sections, and deliver water

under pressure to each division at different hours during the day. The Council were not then prepared to consider that question, and it was therefore postponed. MR. HOGG had since conferred with Mr. Bradford Leslie, the Engineer of the Justices, in conjunction with his hon'ble friend, and they had come to the conclusion that to give effect to the proposal of the Hon'ble Mr. Schalch would be, if not impossible, a matter of considerable difficulty, and impose great inconvenience on the rate-payers and inhabitants of Calcutta. If water was to be delivered in different divisions of the town at different times, the water-supply scheme ought to have been constructed on what they called the loop system, which would have enabled the Engineer in charge of the engine to shut out the water from the whole town and deliver it to one particular division of the town at a time. That system of supply was originally proposed by Mr. Clarke, but was subsequently altered, when it was decided that a uniform pressure should be kept throughout the whole town for 13 hours a day. Consequently, now that that system was not adopted, if we attempted to shut out water from the whole town except one particular division of it at a time, the process of so doing would occupy three or four turnkeys going about in carriages three or four hours, which would cause great delay. Another difficulty was that as the water-supply system now existed, we could divide the town into only three divisions, and if it was decided to supply each division with water for three hours during the day, the other two divisions would not receive water at high pressure for six hours at a time, and would be kept altogether without water during that time, which was a proposal which could not possibly meet the approval of the Council. Therefore they were unanimously of opinion that the scheme was impracticable, and should be abandoned. Mr. Bradford Leslie was also of opinion that the pumping power of the engines was sufficient to deliver water throughout the town from 7 o'clock to 9 o'clock in the morning at a high pressure of 50 feet, provided the watering of streets was not carried on during those hours. MR. HOGG therefore suggested that Section 108 should be passed as it stood.

HIS HONOR THE PRESIDENT said he had one remark to make before this section was passed. It had been represented to him that, having regard to the great public buildings which had been recently erected in the town, it would be very desirable if the altitude of high pressure could be raised from 50 feet to 100 feet. It had been stated that in these great buildings we had three or four stories, and that the pumping up of water to the height of only 50 feet failed to provide water to the very top stories, and that great inconvenience thereby resulted. It was also urged in behalf of these buildings and the establishments which used them, that they contributed very greatly to the funds of the water-rate. On that ground, and also on the ground of the necessities of these establishments, it was urged that these buildings were entitled to have the water pumped up to an altitude of 100 feet. The point was comparatively new to HIS HONOR, and he was not quite sure whether the matter had even been previously discussed in the Council when the original law was passed for the levy of a water-rate, and he desired to mention it for the consideration of the hon'ble member particularly concerned in the preparation of the Bill. Would the hon'ble mover

of the Bill say whether there was any possible provision by which the object could be met; whether we could introduce a provision that in case of Government buildings the height of pressure should be not less than 100 feet? In making this statement, His Honor did not undertake to express any professional opinion, but would merely invite the opinion of hon'ble members or others concerned in the preparation of the measure.

The Hon'ble Mr. Hogg said that the suggestion made by His Honor the President was that the Municipality should be required to deliver water at a height of 100 feet in Government buildings only. He would point out that it would be impossible to supply Government buildings only without supplying the whole town with water under the same pressure. There must be a uniform pressure throughout the town. As a matter of fact, there were not more than about four Government buildings that had a greater height than fifty feet, namely, the Museum, the Telegraph Office, the Mint, and the High Court. The water-supply of Calcutta was constructed only to give a pressure to the height of 50 feet. He submitted that it would be hardly fair to compel the Municipality to provide additional pumping power in order to meet the special requirements of a few buildings in the town. The matter had been frequently discussed, and the reply given was that the greatest pressure was 50 feet, and exceptional arrangements could not be made for Government buildings. The only course was to have reservoirs in those buildings at a height of 50 feet, and then to have a hand pump to pump up the water to the fourth story.

The Hon'ble Baboo Kristodas Pal observed that, as the hon'ble mover had explained, what was required could not be done without changing the pipes and greatly increasing the engine power, which would involve expenditure to a very considerable amount.

The Hon'ble Mr. Schalch said it seemed to him that the Government so far had just cause of complaint that the assessment on the Government buildings was very high indeed, and arrangements ought to be made, if possible, for fully supplying them with water up to the highest floor; and if the water could not be so supplied, some reduction should be made in the assessment in regard to the water-rate to meet the expense to which the Government would be put to raise the water from 50 to 100 feet. The assessment was made on the supposed renting power of the house, and he thought it would be but fair to meet the case of the owners of houses built at such a height that water could not be supplied to the highest floor, that the assessment for the water-rate should not be made for the entire house; it was hard that they should have to pay water-rate for the whole house when only a portion of it was supplied with water.

The Hon'ble the Advocate-General observed that the explanation given by the hon'ble mover of the Bill seemed unimpeachable. If the increased pressure would cost a great deal to the Municipality, he did not think they should be compelled to do more than they were doing now, particularly as the expedient pointed out by the same hon'ble member could be readily carried out at a comparatively small expense; and as Government buildings, owing to the number of persons who assembled in them, consumed more water than houses occupied by private individuals, he thought what the hon'ble member

proposed seemed reasonable. If the Government were to have the option of deducting a portion of the water-rate on account of the non-supply of water to a portion of the building, then any private occupier who was in the same position would be entitled to claim the same concession, and it would be clear that all these exceptional provisions entailed expense and trouble. He thought pressure to a height of 50 feet was sufficient for all practical purposes.

The Hon'ble Baboo Doorga Churn Law did not think that there should be any exceptional legislation on account of buildings which required water to be supplied to them at a greater height than 50 feet.

The Hon'ble Mr. Dampier understood it to be said that Government buildings, on account of their being so vast, and having so many pairs of stairs, did not get the water they required on the higher stories, and that it was not fair that they should pay the full water-rate. He did not think the argument was sound. These buildings got precisely the same advantages of water-supply as any other building; they got a supply of water delivered at a height of fifty feet; and for the stories above that height they had only to carry the water up the remainder of the distance by hand; and as it was much easier to take water up one pair of stairs than five pairs, they got a *quid pro quo* even on the water used on the higher stories.

The Hon'ble Mr. Schalch observed that the main objection proceeded from the fact of the assessment on Government buildings being too high, and now that an appeal was given to an independent tribunal, viz. the Small Cause Court, that objection might not apply so strongly.

The Hon'ble Baboo Kristodas Pal said, the water-supply of Calcutta was not a voluntary system; it was based upon a compulsory system of taxation, and if any distinction were made between the Government and private individuals, because there were certain Government buildings which required water at double the height sanctioned by the existing law, the legislature would be making an invidious distinction between the Government and the public at large. It was well known that water could not at present be supplied to the highest rooms of some of the houses in the town, and the Justices had no power to grant a remission of any portion of the water-rate to the occupiers of such houses. There was great complaint on this score, and provision was accordingly being made in the present Bill to regulate the hours at which the pressure should be put on. It was observable that those who built houses with stories higher than 50 feet did so with their eyes open, because, under the water-supply scheme, pressure could not be given to a greater height than 50 feet, and when the Government had done so, it ought not now to grumble. To keep up the pressure at a 100 feet would be to double the capacity of the pipes and the engine-power, which would entail great expenditure. At the same time to grant a remission of the water-rate because water was not supplied to particular rooms or to particular portions of a house, would be opening a wide door to favoritism. He would therefore oppose any amendment on the subject.

The Hon'ble the Advocate-General observed that the apparent principle upon which water was supplied and paid for was not that a person paid for the quantity of water he consumed; for there were numerous instances where

persons got water without paying for it, such as those whose houses were not liable to the rate, or those who got water by taking it from the streets.

His Honor the President wished to know whether those hon'ble members who were opposed to any remission of water-rate on account of Government buildings would be of the same opinion if the rule were made applicable to private as well as to public buildings.

The Hon'ble Baboo Kristodas Pal said he was not prepared to recommend any change in the law, because it would lead to great confusion and cause serious loss of revenue to the Municipality. As he had already observed, the water-rate had been imposed on a different principle altogether. If the principle were that each person should be taxed according to the quantity of water consumed, then the Government would have a right to a remission of the water-rate on account of particular portions of buildings not being supplied with water; but as the principle of the water-supply scheme was different, and the object was to raise a sufficient amount of revenue from all classes of rate-payers without distinction, with a view to supply water throughout the town, he thought the present law was both just and equitable.

His Honor the President remarked that no one ever proposed to make a different rule for Government, as the proprietor of houses, to that which applied to private individuals. But as the case was represented to him, he understood that the only buildings that would come under that category were some of the Government buildings; in fact that they were the only buildings in the town with anything like that altitude. He merely wished to broach the subject in Council, and had no motion to propose.

The section was then agreed to.

The postponed Section 110 declared the quantity of water to which a householder was entitled for domestic use, and the rate at which additional supplies must be paid for.

The Hon'ble Mr. Hogg said the consideration of this section stood over because it was thought by some hon'ble members that it might press hardly upon the poorer classes. He might mention that the section was not framed with the view to restrict the supply to the poorer and less wealthy classes of the town, but to prevent the improvident waste of water in the higher classes of houses in Chowringhee, and also in the northern division of the town. He had since consulted Mr. Bradford Leslie and the hon'ble member on the left (Baboo Kristodas Pal), and they agreed that instead of allowing 1,000 gallons, we should allow 1,500 gallons for every rupee of tax paid, and instead of charging one rupee for every 1,000 gallons, we should charge one rupee for 1,500 gallons. And, further, to protect the poorer classes it was proposed to enact that the provisions of this section should not have effect or be put in force in respect of any house rated at less than Rs. 1,200 a year. Such houses, under the section as proposed to be altered, would be allowed a monthly supply of 7,500 gallons, or 250 gallons per day. Supposing there were sixteen persons in the house, that would allow to each a supply of fifteen gallons per day. If a person chose to consume a larger quantity of water than fifteen gallons a day, Mr. Hogg thought it just and equitable that such person should be charged for such additional

supply. He did not believe that the section would be put in force to any extent: it would merely provide a penal clause in case of a person not exercising due control in regard to the expenditure of water in his house. He would therefore move the substitution of 1,500 gallons for 1,000, and the addition of the following proviso:—

"Provided that the provisions of this section shall not be put in force in respect of houses assessed at less than Rs. 1,200 per annum."

The Hon'ble Baboo Kristodas Pal said he was quite willing to accept the compromise proposed by the hon'ble mover. He admitted that it was very desirable to check wanton waste of water, but, as he had pointed out at the last sitting of the Council, there were other provisions in the Bill which provided a sufficient check in that respect. The size of the ferule in small houses was in itself a good and wholesome check, and the penal provisions of the Bill would also operate towards that end. But the section as it stood originally contemplated the wholesale restriction of the supply of water, without any distinction between rich and poor, or those who wantonly wasted water and those who used it economically. The section as now proposed to be amended left out a large class of persons from its operation, namely all persons who occupied houses the assessed value of which was less than Rs. 100 a month. That exemption would reach a very great portion of the poorer and middle classes, and so far it was a great point gained. As regards the quantity of water to be sold for a rupee, it was now proposed to be raised to 1,500 gallons. He would have preferred if it had been raised to 2,000 gallons; but as the hon'ble member was not willing to concede that point, he would not press it, but leave it to the sense of the Council to decide. The hon'ble member had said that it was not the intention to put this provision in force generally. But Baboo Kristodas Pal would not put much faith in discretionary government of this kind. The hon'ble member as the present head of the Municipality might not wish to enforce this section, but who knew what his successor might do. The amendment would, however, to some extent act as a safeguard.

The Hon'ble Mr. Hogg's amendments were then agreed to, and the section as amended was passed.

Section 112 enacted that all latrines supplied with water should be provided with cisterns.

The Hon'ble Baboo Kristodas Pal moved the omission of this section. The section required that cisterns should be put up in all latrines and water closets. He did not think the Council ought to anticipate the Justices in a matter of this kind. This matter had never been brought before the Justices, nor was he aware that any report had been called for from their Engineer. He therefore doubted whether the Council was in a position to provide by legislation for such a question. Practically, the system, as far as he had learned by inquiry, had not worked satisfactorily, particularly in native houses. The cistern was filled by a very small tube through which the water entered so very slowly that it took about half an hour to fill it, and as each man passed out the cistern was emptied and it took another half an hour to fill it up. In this way the system caused great inconvenience. If the hon'ble mover did not wish that

latrines in native houses should be connected with the new sewers, he was perfectly right in proposing this section. But he was sure that that was not his object, and he was therefore of opinion that the provision under consideration ought not to find a place in the Bill. It ought to be left to the discretion of the Justices to make such arrangements as they might think fit and convenient, and if it were found practicable to adopt the cistern system, they might do so. But he did not think the Council was in a position to legislate in the matter.

The HON'BLE MR. HOGG said the system of allowing latrines and closets to be connected with the drainage works involved as a necessity that they should be supplied at all times, both in the day and night, with a full supply of water. That necessity could not be secured unless the cistern was provided and water constantly kept there. That became more necessary now that the Justices were not to be compelled to keep up water by pressure at night. If, therefore, cisterns were not provided, from 9 o'clock at night to 6 in the morning there would be no water in the latrines; consequently they would be either very offensive or they would not be used. That was one substantial objection he had to the motion before the Council. On sanitary grounds, Mr. Bradford Leslie was strongly of opinion that the water-supply should not be in any way directly connected with latrines, and he alluded to a case in New York in which water had become tainted by being so connected. That was another reason why it was proposed that the water should be discharged into a cistern, and from thence into the closet. The hon'ble member had said that the effect of the section would be to prevent latrines in the northern portion of the town being connected with the drainage works. To that MR. HOGG would reply that it was far better that they should not be connected than that the latrines should be directly connected with the water-supply.

The HON'BLE BABOO JUGGADANUND MOOKERJEE observed that Chapter XVI of the Bill empowered the Justices to frame bye-laws on such matters of detail as that to which this section applied. He thought that this matter should be left to be dealt with by the Justices by a bye-law.

The HON'BLE MR. HOGG remarked that it was a question of sanitation, and therefore of vital importance, and should be laid down in the law and not be left to the discretion of the Justices.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble mover had observed that this provision was absolutely necessary for sanitation. BABOO KRISTODAS PAL had already pointed out that the cistern took about half an hour to fill, and became emptied as each man passed out. The cistern could only be supplied with water by high pressure; and now that the high pressure was confined to three hours a day, the cisterns would be without water during 21 hours, and the new drainage system, so far as the connection and cleansing of latrines went, would practically come to a dead-lock.

The HON'BLE MR. HOGG explained that the cistern ought to have a capacity of at least 20 gallons; we had refused to allow latrines to be connected with the drainage which were not provided with proper cisterns. It was most dangerous to do so.

The Hon'ble Mr. Schalch said that the section contained a very necessary provision for general sanitation, and he thought the system should be introduced. With regard to the objection that the cistern could only be filled during the hours of high pressure, he thought that as the latrines were situated on the ground floor, the constant pressure of ten feet during the day would be sufficient to fill the cisterns. He should be sorry to see the section omitted.

The Hon'ble the Advocate-General said the difficulty seemed to be in regard to latrines in which there might be no cistern. As he understood the provision, there must be a cistern before a latrine could be connected with the drainage. The dimensions of the cistern were not given in the Act, and must be regulated by the Justices, and places which were too small to hold a proper cistern would not be connected. It appeared to him that the Council should adopt every necessary precaution in order to secure the perfect working of the system.

After some further conversation the motion was negatived, and the section was passed as it stood.

Sections 113 and 114 were agreed to.

Section 115 gave power to enter premises in order to inspect water-pipes and fittings.

On the motion of the Hon'ble Baboo Kristodas Pal, the following proviso was added to the section:—

"Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the zenana or residence of women, which, by the custom of the country, is considered private, unless a notice, in writing, of not less than four hours be given."

Section 116 gave power to turn off water where the pipes or fittings were out of repair.

On the motion of the Hon'ble Baboo Doorga Churn Law an amendment was agreed to, requiring 24 hours' notice in writing before turning off the water.

Sections 117 to 120 were agreed to.

Section 121 required that persons executing any work for laying on water must hold a license from the Justices, and rovided that any licensed plumber infringing any rules or regulations under w. :h he held his license, should be liable to have his license cancelled, and to pa.y a fine not exceeding Rs. 20.

The Hon'ble Baboo Kristodas Pal moved an amendment to the effect that the license should only be cancelled after a third conviction. The object of the amendment was to reconcile this section with Section 125. Section 125 provided a penalty of the same kind, but under that section the offender was only liable to forfeit his license after a third conviction. It would be hard, therefore, that under Section 121 the license should be cancelled on the first conviction.

The Hon'ble the Advocate-General explained that the two things were different; the one was for disobedience of orders, and the other merely for bad work.

The Hon'ble Mr. Hogg observed that Section 125 was not for the protection of the Justices, but of the public, who were put to much inconvenience on account of the careless work done.

The motion was negatived, and the section passed as it stood.

Sections 122, 123, and 124, were agreed to.

Section 125 provided a penalty of Rs. 20 and forfeiture of license after a third conviction for bad work done by a licensed plumber.

The HON'BLE BABOO KRISTODAS PAL said he had been anticipated on this point in the discussion on Section 121. He thought the occupier, employing a licensed plumber who supplied bad materials and gave bad work, should be protected, and he therefore moved the insertion of the following words "and shall forfeit all claim against his employer for such works done or such fittings supplied."

The HON'BLE MR. HOGG thought that that question ought to be left to the decision of a civil court; it was hardly a provision for special legislative enactment.

The HON'BLE THE ADVOCATE-GENERAL observed that it was often a question of opinion as to what constituted bad materials or bad workmanship; that would be a question for the decision of a court of justice; the plumber might in such a case recover under a *quantum meruit*.

The HON'BLE MR. DAMPIER would call attention to the effect of Sections 123 and 125. Under the former section, the Engineer of the Justices might refuse to connect a house with the water-supply if the fittings which had been put on were not executed to his satisfaction. Then, although the house so fitted was not connected with the water-works, and so the bad work could not affect the Justices, yet the Justices might interfere and cause the plumber to be fined. MR. DAMPIER did not object to the cancellation of a license after a third conviction. But if the Justices refused to connect the house with the water-supply because the fittings were bad, why should the plumber be rendered liable to a fine in their interest. How did the matter concern them until a connection was allowed?

The HON'BLE MR. HOGG explained that the provisions of Section 125 were entirely for the protection of the owners and occupiers of houses. The Justices were asked to connect with their mains a house in which fittings had been put on. The Engineer certified that the work was badly done and declined to connect the works, and the owner was put to great inconvenience therefrom. He had to pay a large sum for the fittings, and he was unable to connect them on account of bad work. Then, by this section, the Justices were empowered to step in and to save trouble to the occupier by having the plumber fined. There did not seem to MR. HOGG to be any inconsistency between the two sections or any error in the drafting.

The HON'BLE THE ADVOCATE-GENERAL said the chief objection to the amendment seemed to be that the conviction of the plumber and the adjudication of his claim against his employer were made to depend upon the certificate of the Engineer. It transferred the right of judgment from the court to the Engineer of the Justices. Suppose the Justices got a conviction on the certificate of the Engineer, and the plumber afterwards satisfied a civil court that the materials and work were sufficiently good?

After some further conversation the amendment was by leave withdrawn, and the section was amended so as to leave the determination of the quality of the materials and workmanship supplied to the convicting officer.

Sections 126 to 132 were agreed to.

Section 133 provided that the occupier on whose requisition works for the supply of water were introduced in a house, should bear the expense of keeping such works in substantial repair.

The HON'BLE BABOO DWARKA CHURN LAW moved the omission of the words "on whose requisition works for the supply of water shall have been introduced in any house." He thought those words were hardly necessary, and were calculated to defeat the object of the section. If it was obligatory on the owner to introduce water-works in his house for the convenience of the occupier, the occupier, whether the works were introduced at his requisition or not, ought to bear the expense of keeping them in repair.

The HON'BLE THE ADVOCATE-GENERAL would support the amendment. The words, as they stood, would only make the occupier on whose requisition the works were executed liable to pay for the repairs. He thought that every occupier should be bound to keep the water-works in repair.

The HON'BLE MR. HOGG said it might happen that very soon after an occupier went into a house he might find the whole of the water-works out of repair, and might be called upon to put the whole of them into thorough repair. To do that would necessitate the breaking up of a large portion of the walls of the house, and it would be very hard upon the occupier to undergo such great expense. Besides, the owner received from the occupier interest at the rate of 12 per cent. for the money he expended in the construction of the water-works, if done on the requisition of the occupier; and in cases where the works were in existence at the time of the entry of the occupier, something would be added to the rent of the house on the ground that water had been laid on.

The HON'BLE MR. SCHALCH observed that when the works were executed on the requisition of the occupier, they would be new, and would require little or no expenditure to keep them in repair during the tenancy of that occupier. In such a case there would be no hardship in requiring the occupier to keep the water-works in repair. But in other cases, when a tenant took a house which had water laid on, the fittings might have been put on ten years before; he would have to pay additional rent for water being laid on, and might afterwards find all the pipes corroded; and it would be very hard for him to have to repair them when he had no opportunity of examining them, and could not have known the condition in which they were. The water-works, after once they were laid on, became a part of the house, and the cost of repairing them should be borne by the landlord.

The HON'BLE MR. HOGG explained that the intention of the section was that when works were put in at the requisition of the occupier he should repair them; in other cases it should be a matter of contract between the parties.

The HON'BLE MR. DAMPIER thought the section should provide distinctly who should bear the expense of repairing the water-works. Leases were ordinarily executed with an agreement on the part of the owner to keep the house wind and water-tight. Such leases would not touch the question of keeping the water-works in repair. And if an occupier found the water-fittings out of repair, his state would be worse than if pipes had never been

laid at all bringing water to the house; for in that case he might insist under the Act on the owner putting up fittings to supply the house with water; whereas he would have no means of making the owner repair the fittings if out of order. MR. DAMPIER thought that unless there was a contract to the contrary, the owner should be bound to keep the water-works in repair.

On the motion of the HON'BLE MR. DAMPIER the section was then amended so as to stand thus:—

"Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land in substantial repair. Provided that nothing in this section shall affect the liabilities of parties under leases executed or made previous to the passing of the Act."

Sections 134 to 137 were agreed to.

Sections 138 to 143 provided for the preparation and passing of the police budget.

The HON'BLE BABOO KRISTODAS PAL moved that Sections 138 to 143 be omitted from the Bill. He said that these sections related to the police budget. The Select Committee, in considering these sections, had placed before them the views of the Government, as represented by the hon'ble member in charge of the Bill. They were informed that the Government was not now disposed to continue to the Justices the power of controlling the police in any way; and as far as the consideration of the police budget was concerned, the Justices therefore, although it was not stated in so many words, would be reduced to the position of "message bearers." It would be in this wise: the Commissioner of Police would send up the budget to the Justices, and the Justices would hand it up to Government; the Justices should raise the police-rate, and Government would disburse the money. This was practically the scope and object of the Bill as amended by a majority of the Select Committee. He did not know how far the position assumed by the hon'ble member in charge of the Bill had been influenced by Government, but he submitted that that position reflected upon the Justices as a body, and he was not aware that any cause had been given to Government for such a course. It was in 1867 that the police-rate was first imposed by the Government upon the people of Calcutta. Previous to that, the whole of the police charges had been borne by Government, who controlled the police and met its expenses. In 1865 BABOO KRISTODAS PAL believed, when Sir Charles Trevelyan was Finance Minister, the Government of India decided that towns in the country should be called upon to bear the greater portion of the police charges; and in the case of Calcutta, it was resolved that the Municipality should bear three-fourths and the Government one-fourth of the cost. That resolution of the Government of India was embodied in Act XI of 1867. With a view to give the rate-payers a voice in the police administration of the town, the Justices were vested with the power of considering and passing the police budget. From 1867 up to that time this system had been in operation, and he would appeal to the hon'ble member in charge of the Bill to say whether at any time there had been any undue interference by the Justices with the action of the Commissioner of Police or the Government in the administration of the police. It was

meet, he thought, that the Justices, as representatives of the rate-payers, should have a voice in the administration of the funds which were raised by them. That being the case, he did not see any good or valid reason why the power which had been exercised theretofore by the Justices without detriment to the police, should now be withdrawn. It was urged in Select Committee that there might arise some contingencies which might render the relations between the Justices and the Government anomalous, something in the womb of future which could not now be anticipated. But if the Government was anxious, as he believed it was, to extend a measure of self-government, it was a curious way of expressing its anxiety by withdrawing a power which the Justices had long possessed, and which they had never abused. He was sorry to see that his hon'ble colleague (Mr. Brookes) was not there that day to express the views of the European community; but from what he said in the Select Committee, BABOO KRISTODAS PAL believed that the views which Mr. Brookes expressed were shared by the non-official community generally. It would be painful to him, as well as to the other non-official members of the Council, if the question was made an issue between the Government and them; but he hoped that the Government would on further consideration admit the importance of the subject, and not take any hasty action in the matter. But, as he had said, the Justices had done nothing to forfeit the confidence which the present law reposed in them; on the contrary, the Justices, while criticising the police budget, and making suggestions now and then, had uniformly passed it in its integrity. He thought it was assuming too much to say that the power was likely to be abused, and that therefore it ought to be withdrawn. He might point out that since the maintenance of the police had devolved on the town, there had been a tendency to increased police expenditure; but he believed the hon'ble mover would admit that the Justices had in no way meddled. They were well aware that police arrangements ought not to be rashly interfered with, and that one man should, if practicable, rule over the police, and that that man ought to be the Commissioner of Police; and with that view, if they had any important suggestions to make in respect of police administration, they ought to go through their Chairman, who was Commissioner of Police, and they had done so. Having regard to these facts, and believing that it was much better that the Justices should be altogether relieved of all connection with the police than that they should have placed before them a mere shadow without the substance, he would propose that these sections be omitted, and that the old sections of the existing Act be restored.

The HON'BLE MR. HOGG said he could not accept the amendment. The object of Sections 138 to 143 of the Bill was, in fact, to give effect to the law as it stood. The Calcutta police was constituted under Act IV of 1866 of this Council, and by that Act was entirely under the control and orders of the Government. He thought it would be conceded by the Council that the police of the metropolis of India could not be placed under any other control than that of the Government of Bengal; and for the Justices to desire to have any voice in the direct administration of the affairs of the police, was to wish for more than could be conceded to them. When the

expenditure of the police was imposed on the Municipality, it was provided that the Commissioner of Police should submit to the Justices a budget of expenditure under Act XI of 1867; and by Section 5 of that Act it was left to the discretion of the Justices to pass or to reject or to modify and to submit the budget as passed or modified by them to the Lieutenant-Governor of Bengal. It would be clear to the Council that that section was entirely antagonistic to the principle upon which the police was constituted as laid down under Act IV of 1866; so much so that the late Advocate-General (Mr. Cowie) was of opinion that Section 5 of Act XI of 1867 was practically inoperative, as it set aside the principle of Act IV of 1866. It was true that the Justices up to this time had never endeavoured to interfere in the administration of the police, and had always accepted, with perhaps slight modifications, the budget the Commissioner of Police had submitted; but it was obvious that misunderstandings might possibly arise, and the Justices might claim to exercise the discretion which was apparently vested in them. In order to do away with the possibility of any such misunderstanding, it was proposed by the Bill that the Commissioner of Police should lay before the Justices year by year an estimate of expenditure on account of police, and that it should be the duty of the Justices to forward the budget to Government with any remarks which the Justices might think fit to offer. That gave to the Justices full opportunity for an expression of their opinion and remonstrance against any additional expenditure proposed by the Commissioner of Police; but left to the local Government to decide on the strength and cost of the police. That, he thought, was the proper principle that should be adopted by the legislature. It was precisely the same procedure as that which existed at Bombay and Madras. The Madras Act IX of 1867, Section 9, provided that after the date of the Act the Municipal Commissioners should pay into the Bank every month such sum as the local Government might direct for the maintenance of the police. If they turned to the Bombay Act, they found that under Section 86 of Act III of 1872, the Bombay Municipality were required similarly, under the orders of the Government, to pay into the Bank of Bombay such sum as the Government chose to direct. Those were two analagous cases, and he did not see why the Justices should claim greater power than the municipalities of Madras and Bombay. For these reasons he trusted the Council would adopt the provisions of the Bill as they stood.

The HON'BLE THE ADVOCATE-GENERAL said it appeared to him that no great hardship was imposed on the Justices by an alteration of the existing law. As far as he could make out, they had no control over the police. That was entirely under the Commissioner of Police, subject to the orders of the local Government. The only matter with which the Municipality had to deal was the imposition and collection of the police-rate. It was provided that the amount of the estimate passed should, after deducting therefrom such amount as might from time to time be allowed by the Government from the general revenues towards the maintenance of the police force, be paid to the Lieutenant-Governor by the Justices out of the annual proceeds of the police-rate. So that the Justices had to supply that amount out of the police-rate,

and not out of the general revenues of the Municipality. Then, could it be said that the mere effect of collecting the money ought to give them that controlling influence which the present law allowed them? Under the present law, the Municipality had the right of rejecting the budget altogether. In the event of the budget being rejected, it could not go up to Government at all. It appeared to him that they ought not to have the power of rejecting the budget altogether; they ought not to have the power of rejecting a budget on a subject on which they could have no proper information nor any sufficient knowledge, and he thought that the argument which sought to enforce the principle of the present law was somewhat specious. The police-rate was collected for the maintenance of the police, and held in trust; and he really did not see that the Justices should have any control over the objects for which it was collected unless they had some voice over the objects to which that fund was devoted. He thought that in this case there was no hardship imposed, and that the amendment in the Bill was in the right direction. It prevented a possible collision which might take place between the Government and the Municipality. It had been said, with great truth, that no instance could be shown in which the police budget had been rejected by the Justices. That circumstance proved clearly that the power of rejection was one which was not required, inasmuch as it had never been used; and further, that it was not likely to be used, except in some extraordinary cases. What would be the effect, suppose the power was used? It would, in the event of the rejection of the budget on the ground of excessive expenditure, be an animadversion on the conduct of the Commissioner of Police and the Government for having submitted such a police budget! Such a state of things was not desirable, and was never contemplated; and he thought that proper criticism by the Justices would be duly considered. As far as he could see, looking at the matter from a disinterested point of view,—for he had no sympathy one way or the other,—he thought the Justices had no right to complain if the arbitrary power of rejection was taken away. They could be heard now as loudly as before, and they might collect the police-rate, though they had no control over the expenditure of that rate. He would oppose the amendment on this ground, that beyond collecting the rate the Justices had no control; and the mere effect of collecting the rate did not entitle them to have a control in rejecting the budget.

The Hon'ble Baboo Kristodas Pal wished to say a few words in reply. While appreciating the feelings which had prompted the hon'ble and learned Advocate-General to address the Council, he regretted that he could not agree with him. But he seemed to have lost sight of the fact that when the police-rate was first imposed upon the town by Government, it was, if Baboo Kristodas Pal remembered it aright, distinctly declared that a share should be given to the people in the administration of the police; that, in fact, the people should be invited to take a part in that administration. That having been the object of the new police administration, the principle was recognized in the Act of 1867. That principle had been in operation for the last eight years, and it was admitted that it worked fairly. It was now

proposed to go back and make the Justices only tax-collectors. He would ask whether such a position—he meant the position assumed under the new sections—was consistent with the previous declarations of Government and its present professions for the extension of local self-government. Then the hon'ble and learned member had pointed out that the fact that the Justices had not exercised the power of interference with the budget showed that there was no necessity for it. Might it not be said that the knowledge of the circumstance that the budget of the Commissioner of Police would be sifted by the Justices might have influenced that officer to frame it in such a way as to disarm criticism, and that the present law had had that good moral effect upon him? Then it had been said that the withdrawal of the power would cause no hardship to the Justices. But undeservedly it would imply a want of confidence in the Justices. The hon'ble mover had pointed out that under Act IV of 1866 the police was entirely under the direct control of Government. He admitted it. Section 8 provided that the strength at which the police of Calcutta should be maintained should be fixed by the local Government, subject to the sanction of the Government of India; so that its ultimate control was vested in the Governor-General of India in Council, and not, as the hon'ble member had stated, in the Bengal Government. The final control being vested in the Government of India, it was suggested in Select Committee that, with a view to provide against such contingencies as had been apprehended, it might be enjoined that in case of any difference of opinion between the Justices and the Government of Bengal with reference to any item of police expenditure, the decision of the Government of India should be declared conclusive. But that amendment was not accepted by the hon'ble member in charge of the Bill. BABOO KRISTODAS PAL was still willing to propose such an amendment if the Council would accept it. He did not wish that there should be no supervision of Government over the police, or that the decision of the Justices should be final in case of any difference of opinion between the Commissioner of Police and the Justices or the local Government. He would follow the theory of the law laid down in Act IV of 1866, that the ultimate control of the police be vested in the Government of India; that the final decision should rest in all matters with that Government; and if the Council would accept such an amendment, he would be prepared to move it.

HIS HONOR THE PRESIDENT said—"I may say at once that I for one cannot in any respect accept the amendment which the hon'ble member has proposed. It would be wholly out of the question to place the Government of Bengal and the Justices in Calcutta as now constituted two parallel bodies who may have a difference of opinion, which difference should be submitted to the Government of India for decision.

As regards the general question, I desire to disclaim on the part of the Government of Bengal any intention whatever to take away from the Justices any substantial portion of the power which they now enjoy. The fact is, as stated by the hon'ble member in charge of the Bill, that the power of fixing the strength of the police has been by the section already quoted (Section 8 of Act IV of 1866) retained by the Government of Bengal, subject, of course, to the

sanction of the Government of India. The Council are aware that in all matters of finance and strength of establishments, there rests in the Government of India, in the Financial Department, the ultimate power of control. In all matters of finance such control is necessary in order that the finances may be kept together. That is as well the case in regard to the provincial services. There is no sort of expenditure, from the largest to the smallest, which is not liable to the ultimate control of the Government of India. In that respect I do not perceive that the expenditure on account of the Calcutta police in any way differs from any other expenditure, and in any way confers any higher power on the Government of Bengal. As I understand the question, it is, as stated by the hon'ble member in charge of the Bill, that there is just a possible conflict between the provisions of Act IV of 1866 and the provisions of Act XI of 1867. The fact is that the terms of Section 5 of Act XI of 1867 are quite unscientifically drawn. I say it with all deference to the legal gentlemen who drafted the Act of 1867. From a drafting point of view it may mean more or less, according to the interpretation which individuals may put upon it; but it is extremely doubtful whether Section 5 of the Act really interferes with Section 8 of Act IV of 1866. Act IV of 1866 gives the Government the power of fixing the strength of the police force. The Act of 1867 gives power to the Justices to pass or to reject or to modify the budget. The preparation of a budget is a mere financial process relating to an establishment otherwise fixed, and would ordinarily be little more than fixing the details of expenditure. There may be discussion on a budget as to whether for such and such a given strength it is necessary to provide such and such a sum; for instance whether a sum which was entered as five and a half lakhs of rupees should be fixed at five lakhs, or *vice versâ*, and so on. In such a discussion many important financial points would arise without, however, touching the fundamental point, namely the strength of the establishment. The process of preparing a budget would not ordinarily mean more than that. But looking to the ambiguity of the expression used in the Act, it is possible that some particular person, even some legal authority, may put a different construction upon that provision, and may say that the power of passing or rejecting the budget really means the power of interfering with the strength of the establishment. I believe, however, that that is not the correct ordinary financial acceptation of the term "passing a budget." But I feel sure that the legislature of that day, if they understood that the accepting or modifying of a budget meant a substantial alteration of the power given by the Act of 1866, would never have passed such a provision. I believe that what I have stated is the ordinary financial acceptation of the term passing or modifying a budget, which is a perfectly practical arrangement. That, I am convinced, is the real meaning of the legislature. I cannot conceive that the legislature had any other intention whatever. But looking to the importance of the matter and the possibility of a different, and perhaps embarrassing interpretation being put on this section, I cordially concur with what has fallen from the hon'ble member in charge of the Bill and the learned Advocate-General, that the present opportunity should be taken to put a good

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interpretation on these two apparently conflicting enactments, and to enact an arrangement which should be workable and practical. For although I entirely accept what the Hon'ble Baboo Kristodas Pal has said as to the desire of the local Government to accord a reasonable amount of self-government to the Municipality, yet, with all deference to him, I must say at once that, however great concessions we may make in that direction, we cannot make the concession go to the extent of giving over to the Justices the power of regulating the strength and constitution of the police in the metropolis of Bengal. That is a very important power, and, under certain circumstances, may be of vital importance; and however great may be our confidence in the power of the Justices to regulate their municipal affairs, we cannot go so far as to give over to them such a very large amount of power as to fix and determine the strength of the force which is to keep the metropolis in order. I will therefore hope that the Council will see fit to pass the sections as they stand."

The motion was then put and negatived, and Sections 138 to 143 of the Bill were agreed to.

Sections 144 to 151 were agreed to.

Section 152 provided a penalty of Rs. 100 for neglecting to give information of births or deaths.

The Hon'ble Baboo Doorga Churn Law moved the substitution of Rs. 20 for Rs. 100. The penalty imposed was, in his opinion, too heavy. Considering the large number of ignorant classes that would have to be dealt with under this section, it would be a great hardship if any Magistrate took it into his head to levy the full penalty under the section, and he therefore thought that the maximum penalty should not exceed Rs. 20.

The Hon'ble Mr. Hogg observed that in the case of a poor person a fine of Rs. 100 would no doubt be very heavy; but in the case of a person who absolutely declined to conform to the provisions of the law, he certainly thought the maximum penalty would not be too heavy.

The Hon'ble the Advocate-General said he should support the amendment. He was for limiting discretion in every case as much as possible. Persons who were likely to be offenders under this section would not belong to the wealthy classes. The object should be to secure generally the objects of the section, and he thought a fine of Rs. 20 was sufficient.

The motion was carried, and the section as amended was agreed to.

Sections 153 to 168 were agreed to.

Section 169 provided that the gross proceeds of the lighting-rate should be applied to the purposes of lighting, "but the Justices may expend, out of the Municipal Fund, such further sums as may from time to time be requisite for the purchase, setting up, cleaning, and maintenance of lamps, lamp-posts, pipes, and other necessary apparatus."

The Hon'ble Baboo Kristodas Pal moved the omission of the words quoted. He had stated at the last sitting that the produce of the increased assessments had been so large that the Lighting-rate Fund was now self-supporting, and the Council ought therefore to take the opportunity afforded by this Bill to omit

the power given to the Justices to make contributions from the General Fund to the Lighting-rate Fund. If the lighting of the town depended upon the Lighting-rate Fund, then there would be economy practised in its administration; otherwise there might be extravagance.

The HON'BLE MR. HOGG said it was suggested in the Bill, as introduced, that the lighting-rate should be fixed at 2½ per cent. The hon'ble member objected to increase the rate, but thought that this power to make contributions from the General Fund should be given. But now, having obtained in Committee the alteration of the 2½ per cent. to 2 per cent., he proposed to omit the power to make contributions from the General Fund. His hon'ble friend should remember that the whole of the town was not at present lighted as it should be. True it was that all the chief public streets in the European portion of the town were lighted with gas, and although the chief streets in the native portion of the town were also so lighted, there were many lanes in that quarter which required better lighting. Under the Bill as it now stood, the Justices would only be entitled to levy a rate of 2 per cent. But as that would not be enough to provide for exceptional expenditure, it was proposed that charges on account of lamps, lamp-posts, and the like, might be paid by a grant from the Municipal Fund. He believed that the majority of the Justices were unwilling to exercise this power, but he thought the Council would do wisely in enabling the Justices to do so if they thought it advisable.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble mover was correct in saying that BABOO KRISTODAS PAL had objected to the increase of the lighting-rate and consented to power being given to the Justices to make contributions from the General Fund, if necessity arose. But circumstances had since changed. There had been a large accession to the Lighting-rate Fund. Formerly one per cent. of lighting-rate produced one lakh of rupees, whereas it now yielded Rs. 1,18,000, so that the Justices would have an additional revenue of Rs. 36,000 from the two per cent rate. That was the reason why he thought it was not now necessary to give the Justices power to make contributions to the Lighting-rate Fund from the general revenues of the municipality.

The HON'BLE MR. HOGG observed that the proceeds of the lighting-rate just covered the current expenditure on account of lighting. The Justices had for a series of years annually sanctioned a grant of Rs. 20,000 to the General Fund, and that was without any exceptional expenditure for providing lamps, lamp-posts, &c.; so that if they desired to extend gas-lighting throughout the town, especially the northern portion of the town, the power to make contributions for such extensions should be given.

The motion was by leave withdrawn, and the section passed as it stood.

Sections 170 to 179 were agreed to.

Section 180 specified the conditions under which the Justices might declare private streets to be deemed public.

On the motion of the HON'BLE BABOO KRISTODAS PAL, the consent of three-fourths of the owners of houses in such streets was rendered necessary before the Justices could declare any such street to be public.

Sections 181 and 182 were agreed to.

Section 183 provided that the doors and ground-floor windows of houses were not to open outwards upon any street.

The HON'BLE BABOO KRISTODAS PAL moved an amendment, with the object of confining the operation of the section to doors and windows "hung or placed subsequent to the 1st June 1863," the date of the commencement of Act VI of 1863, the existing municipal law.

The HON'BLE MR. HOGG said the section was drafted precisely as the existing law stood. The object was to compel the owners of houses, in which doors and windows opened on the street, to hang them so as to open inwards. The opening of such doors and windows outwards was unobjectionable before the foot-paths were constructed, as they opened over the drain, and did not obstruct traffic; but now it would not only obstruct the traffic on the foot-path, but become absolutely dangerous to the passers-by. In the interests of the public, he considered it absolutely necessary that the section should stand as it was.

The motion was by leave withdrawn, and the section passed as it stood.

Sections 184 and 185 were agreed to.

Section 186 provided for the removal of existing projections from houses, and the conditions under which compensation should be made in such cases.

The HON'BLE THE ADVOCATE-GENERAL drew attention to the portion of this section which provided that if the projection was lawfully made, the Justices should make reasonable compensation to any person who suffered damage by the removal; and if any dispute should arise touching the amount of such compensation, the same should be settled in the manner provided for the settlement of disputes, damages, and expenses. Suppose the dispute were whether the projection was lawful or unlawful; suppose the right of compensation was denied. There was no provision for the decision of the question whether the projection was lawful or unlawful, but only as to the amount of compensation.

The HON'BLE MR. HOGG thought that under the section the question of a projection being lawful or unlawful would depend upon the date upon which the projection was erected: the section only applied to projections erected before 1st June 1863.

After some further conversation the section was amended, on the motion of the HON'BLE MR. DAMPIER, by providing that the right to compensation as well as the amount of compensation should be the subject of settlement in the manner provided in the Bill.

Sections 187 to 209 were agreed to.

Section 210 provided that no latrine should be constructed within fifty feet of a tank.

The HON'BLE BABOO KRISTODAS PAL moved the addition to the section of the following proviso:—

"Provided that the Justices shall not withhold assent if any latrine, urinal, cesspool, house drain, or other receptacle, be constructed with masonry."

He said that this section, if allowed to pass without modification, was calculated to prove a source of great practical inconvenience to the native

community. It would lead to the demolition of all latrines in native houses situated in the vicinity of tanks. The object of the provision, he understood, was to prevent the percolation of fœcal matter into tanks by reason of the vicinity of latrines, urinals, and drains. But he contended that if they were constructed of masonry, there would be no danger of such percolation, and he hoped therefore the Council would consent to the amendment he proposed.

The Hon'ble Mr. Hogg said he did not think it would be wise to adopt the amendment. As a fact, the matter would not be less offensive if it came from a pucca than from a kutcha latrine or drain. Having regard to the health of the town generally, he thought it would not be advisable to allow latrines to be constructed close to tanks used for the purpose of drinking or other domestic purposes.

His Honor the President asked whether it was not possible for percolation to go on through masonry by means of some chink or other. From experience in various parts of India, he believed there was nothing more dangerous than to have anything like a latrine in the vicinity of tanks or wells. That one thing was probably more frequently the cause of outbreaks of cholera than anything else. It was quite possible for percolation to go on even through masonry; water would find its way almost through anything. Though he quite concurred in the inconvenience described by the hon'ble member who moved the amendment, he entreated the native members of the Council to be extremely particular in legislating in regard to latrines in the proximity of tanks. The inconvenience spoken of was better than the risk of infection. Even where tanks in the vicinity of latrines were used only for washing and bathing purposes, he knew of cases of terrible disease breaking out, probably caused by that very thing; and if the provision of the section was good for kutcha latrines and drains, he thought it was almost equally necessary for pucca drains. Water would ooze through almost anything.

The motion was negatived, and the section passed as it stood.

Section 211 was agreed to.

The Council was then adjourned to Saturday, the 27th instant.

Saturday, the 27th November 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble Baboo Doorga Churn Law,
and
The Hon'ble Baboo Kristodas Pal.

CALCUTTA MUNICIPALITY.

His Honor the President said.—Before calling on hon'ble members to speak to the motions which stand in their respective names, I will ask the permission of the Council to make a very brief statement regarding my views on the subject of the future constitution of the municipality of Calcutta. The Council are doubtless aware that complaints of different sorts are made about the existing state of affairs in the municipality. I have not received any definite representations on the subject, and I cannot at all undertake to describe what the complaints are. I can only declare my general impression that complaints of some kind and sort are frequently made. Well, if these complaints shall be found to assume any definite form—that is, if any specific allegations shall be pointed out to me, or if any rate-payer or rate-payers shall come forward in their own names to make allegations, thereby incurring the responsibility which always attaches to gentlemen who put down their names to statements,—then I for one shall be in favor of immediately investigating, in a formal and official manner, such allegations. If I have power to make such inquiries in my executive capacity, I will do so; but if I were advised that I have not the power, then I should desire to apply to this Council to give me the power by legislation. I for one, on behalf of the Bengal Government, am perfectly ready to immediately inquire into any specific allegations which may be made; and I believe that the office-bearers of the Justices will be very glad that any specific allegations should be thus inquired into. I should rather suppose, though I cannot speak authoritatively on that point, that the Justices themselves will be glad that any specific allegations made by any rate-payers should be officially examined.

But apart from all such matters, there is the general question as to whether the constitution of the municipality is all that can be reasonably expected in the present state of affairs. Well, when I last adverted to this subject in March last, it was quite uncertain whether public opinion in this city called for any constitutional changes. Constitutional changes of this nature appeared to me to be matters on which the public opinion of this city should be consulted; and

inasmuch as there was no urgent call apparently from the rate-payers, or from the public, that there should be such changes, it did not appear necessary to me to make any direct movement on the part of the Government. But it appears to me that public opinion among the rate-payers is now manifesting some desire for constitutional changes. One distinguished Association of native gentlemen has made a representation on the subject, and another representation has been received by the Council this very morning, I believe, also advocating some constitutional changes. That being the case, it appears to me that the time has fairly arrived when I ought to state to this Council what is the nature of the changes to which I for one could assent. Of course, it is not for me to say what changes the Council shall sanction; that is for the Council to decide. But inasmuch as by law my assent would be required to such changes passing into law, it is as well that I should briefly submit to the Council a statement as to how far I for one could agree to go. So without in any way anticipating what decision the Council may be pleased to arrive at, I desire to state briefly the limits as above described. Now, I think that in the Bill we are now considering, Municipal Commissioners may be fairly substituted for the Justices. Whatever powers, rights, or property now vest in the Justices, would then vest in the Municipal Commissioners. Then, the question will be how such Municipal Commissioners shall be appointed. I for one always have been, and am still, in favor of the principle of election. I think it is most desirable that the rate-payers as a body should be accustomed to study their own municipal affairs, that they should take a lively interest in the checking of expenditure, and in reducing the necessary taxation to the lowest possible amount. Besides that, I am sanguine that our hon'ble native colleagues in this Council will bear me out when I say that it is good, morally good, for the natives of this country that they should be accustomed to incur that responsibility to their own judgment and conscience which is implied by the exercise of the franchise. The fact that every rate-payer, or a very large number of rate-payers, should have to say whether they will have this man or that to represent them, is in itself a good thing for them. Also, though I think there must be a certain limit placed by the Government on the powers of the Municipal Commissioners of such a place as this, still, with that qualification and that reservation, I am in favor of giving them as much self-government as may be safely possible. That being the case, I shall propose that a large portion—at least a large portion—of Municipal Commissioners should be elected. The town is divided, as hon'ble members well know, into eighteen divisions, called "thanas." For each thana one or more Municipal Commissioners should be elected by the suffrages of the rate-payers. Then, the question arises as to what shall be the qualifications of a voter. I think, for one, that such qualification should depend on the sum he pays yearly in the shape of rates. By "rates" I mean the four rates now imposed, namely the house-rate, the police-rate, the lighting-rate, and the water-rate. If a limit were taken of Rs. 50 per annum—that is to say, if it were decided that every man who paid Rs. 50 a year in the shape of rates (all four rates taken together,) should have a vote—that would give a constituency of about seven thousand voters. It may be thought that such a

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constituency would not be large enough. If that were so, perhaps it would be sufficient to say that every man who paid Rs 20 per year in the shape of rates should have a vote. The precise sum would depend on more inquiry than we can make at this moment. It will be a question of time and discussion, and I can hardly indicate the precise sum at this moment that should be made the limit of qualification, except that I am *sure* it ought not to be more than Rs. 50, and I *think* it ought not to be less than Rs. 20.

The next point should be what should be the number of Municipal Commissioners. Before I enter upon that point, there is one matter which I should like to notice. It is this. It will be undesirable to impose any restriction on the electors as to whom they should elect. They may simply choose whom they like, but to that general principle there may just be one exception. If hon'ble members will consider the point exactly, they will see that there are certain "thanas" in this town in which the property and intelligence belong mainly to Europeans, and there are certain thanas, most of them, in which these appertain to the natives; the natives are the persons who own property in these latter, and they represent the intelligence of that portion of the town. But there are certain thanas in which the Europeans chiefly reside. Now, unless some provision were made, it may happen that although all the residents of importance are Europeans, the numerical majority are natives, and it is possible that in every thana where Europeans congregate, native representatives may come to be elected. I think, therefore, it will be but fair to the peculiar position of European residents in this place that in such particular thanas where they reside, it should be laid down that one or both the representatives must be Europeans. There would be, as I believe, a certain limited number of thanas so situated. But with this exception, and in all the other thanas, I would be for leaving the choice of the electors as free as air.

Thus I come to the possible number of Municipal Commissioners. Well, after much reflection it appears to me that the best number I can suggest is sixty. Out of these at least forty, or two-thirds, should in my opinion be elected, and the remaining one-third be appointed by Government. But whether the proportion should be one-third or some less proportion than that, say, one-fourth, would depend on the decision that is arrived at as to whether certain thanas should be obliged to return European representatives. If that exception were not allowed, and if it were possible that all the representatives elected would be natives, then I think it would be necessary to give Government the power of appointing such European (official or non-official) gentlemen as it may see fit. In that case the number should be at least one-third to be appointed by the Government. But if, on the other hand, that exception were allowed, and a positive chance be given to the Europeans in the European quarter to be elected representatives, then I think it will be sufficient for the Government to have the power of appointing only one-fourth of the whole number. If Government have the power of appointing either one-third or one-fourth, then it would be able to select perhaps certain officials who, from their position in the town, are peculiarly qualified to be Commissioners, or certain European non-official gentlemen, or also certain native

gentlemen of rank and position. There may be native gentlemen who would be precluded by the usages of native society from seeking suffrages publicly, and yet may be most desirable persons to have on the municipal commission. Therefore the Government should have the power of nominating a limited number of such gentlemen.

The next question would be the period of office. It appears to me that the members appointed by the Government should be appointed for two years, just as the members of this Council are appointed for a period of two years. I believe there are sufficient precedents and analogies for this; but the elected members should, in my opinion, be elected for four years at least. I think it will be important to avoid the periodical excitement which would arise from a general election all over the town

The last point would be the powers to be exercised by the Municipal Commissioners. Well, though I am, as I have already said, in favor of giving the Corporation as much power of self-government as may be safely possible, yet I certainly think that there are points in which the Government must retain the final authority. These points are the ordering of particular works of public utility to be executed, the levying or limiting of taxes, and the fixing of the strength of the police establishment. So, I submit it will be necessary either to pass some general power compelling the Commissioners to obey any order they may receive from the Government, or, if that were thought to be too general—and I do not think that so wide a power need be insisted upon—then it would be sufficient to take certain particular points, such as those I have mentioned, the great works of public utility, the taxes, and the police, which may be specified as the points upon which the Municipal Commissioners must obey the orders they may receive from Government. I should suppose that such occasions would be extremely rare when Government would thus interpose. The Municipal Commissioners would order and carry out great works, would settle the taxes, would find money for paying the police establishment with the same regularity, and in the same manner, or something in the same manner, as the Justices have done for many years past. But still extreme cases may arise, and I think some of our learned colleagues will bear me out when I say that legislation must always cover extreme cases. It is indeed for extreme cases, rather than ordinary cases, that laws are enacted. If laws are to be enacted, we ought always to make our laws such that they will hold water when pressure is exerted.

Such, then, is the statement I have to submit to the Council. I will end, as I began, by begging it may be understood that I do not bring these proposals before the Council at all in a dogmatic manner. I shall be quite willing, if the Council approves, to place these propositions in a definite shape; and if the Council will permit me, I will refer them to the Select Committee for consideration. But I hope that the statement I have made, which I have deemed it necessary to make at the present time, will not at all interrupt the Council in proceeding with the detailed sections of the Bill; because I submit that most of those sections will be needed, whether the powers of the Act are to be vested in Justices of the Peace or in Municipal Commissioners.

His Honor the President

The HON'BLE MR. HOGG then moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

On the motion of the HON'BLE MR. HOGG, the following words were added to Section 91, which authorised an appeal from any assessment to be made either to three Justices or to the Court of Small Causes:—

"In any case of an appeal to the Court of Small Causes under this section, the said Court may follow the procedure laid down in Sections three hundred and twenty-five and three hundred and twenty-six."

The HON'BLE MR. HOGG said he would now ask the Council to consider Part II of Chapter IV, commencing with Section 66. It would be in the recollection of the Council that at the first meeting of the Council at which the Bill was taken into consideration, the principle was adopted by the Council that the water-rate should in future not be paid, as at present, by the owner, but by the occupier, with permission to him to recover from the owner by way of deduction of rent one-fourth of the amount of the water-rate paid by the occupier. The chapter was allowed to stand over in order that the wording of the different sections might be so amended as to give effect to the principle passed by the Council. When he came to redraft the sections, considerable difficulty was found to exist in giving effect to the principle adopted by the Council. If we imposed the whole rate in the first instance on the occupier and levied it from him, it followed that all unoccupied houses would be exempt entirely from the water-rate. That would impose on the municipality very considerable loss, because at present they collected, whether a house was occupied or not, one-fourth of the rate which was supposed to be a contribution paid by the owner for the water used in the general conservancy of the town and in the watering of streets. Of course the difficulty might be met by providing that when a house was unoccupied, one-fourth of the rate should be levied from the owner. But he thought in practice that would create endless confusion. Bills would be constantly drawn in the name of the wrong person, and MR. HOGG did not think it advisable to have recourse to such an alternative provision. Therefore the only course would be for the Council to decide either that in the case of unoccupied houses no rate should be levied at all, or revert to the present system of levying the rate from the owner and allowing him to recover three-fourths from the occupier. He would therefore move that the Council revert to the existing arrangement and allow the water-rate to be levied as at present from the owner.

The HON'BLE MR. DAMPIER would ask whether the hon'ble mover could give an idea of what the loss would be to the Justices if they were not to levy the water-rate from unoccupied houses, and whether he did not think the Justices would prefer to have the power of levying one-fourth of the rate from owners in the case of unoccupied houses, although its levy might be attended with a certain amount of difficulty, rather than the alternative of getting nothing from such houses.

The Hon'ble Mr. Hogg said he was not in a position to say what the loss would be, but he believed it would be very considerable. It would be clearly more to the advantage of the Justices to have a section giving them the power to collect one-fourth of the rate from the owner in the case of unoccupied houses, although its collection would be attended with a certain amount of difficulty. He did not, however, wish to press the point, but he thought it his duty to bring it to the notice of the Council.

The Hon'ble Baboo Kristodas Pal said he had hoped the hon'ble mover would be prepared to state the extent of loss which the Municipality would incur if the owner's rate of one-fourth were not recovered in the case of unoccupied houses. His own impression was that the loss would not be very great, and as the rate would be leviable in advance, he believed it would be much less than if it were recoverable in arrear.

The Hon'ble the Advocate-General observed that if the owner's rate was not levied on account of vacant houses, it would be necessary to define what occupation was. He had known instances where houses had been rated as occupied where some furniture had been kept in one room of the house.

The Hon'ble Mr Hogg's motion was then by leave withdrawn.

The revised Section 67 was agreed to.

The revised Section 68, which was the counterpart of Section 67 of the Bill, provided that, for the purposes of the house-rate, the owner of any land upon which a house was situate was to be deemed to be the owner of the house also.

The Hon'ble Baboo Kristodas Pal said he had given notice for the omission of this section. His objection was that it altered the present law. Under the existing law the rate for the land was realized from the owner, and the rate for the house which stood on the land was recoverable from the occupier or owner of the house. This section contemplated the levy of the whole rate for the land and house from the owner of the land, leaving him to recover the rate for the house from the owner or occupier of the house. He did not see the justice of this provision. The Municipality had a large establishment for the collection of the rates and taxes. It had also great facilities under the law for the realization of its dues; and if, notwithstanding those special powers and advantages, it was not able to realize its demand, surely it would not be just to throw the duty of the Municipality upon the owner of the land, who had to contend with great difficulties in the collection of his legitimate rent. The highest court in the country had decided that a hut was moveable but not removeable, and consequently the landlord could not seize a hut for rent, and in not a few cases feared the landlord would be saddled with the rate for which the occupier was liable. The present law was fair and equitable. It took from the landlord the tax due from him, and from the owner of the hut or house the tax due from him. He did not see any reason why the responsibility for the rate in the cases under comment should be shifted from the occupier to the owner, and he therefore moved that the section be omitted.

The HON'BLE MR. HOGG said he was unable to accept the motion to omit this section. In nearly every case, except *bustee* property, the owner of the land was also the owner of the house standing on it. It would give rise to endless confusion if the Municipality had to prepare two bills, one for the owner of the house and one for the owner of the land. The section was taken word for word, or almost so, from Section 7 of Act I of 1870 of this Council. That section applied, it was true, only to the water-rate, but it must be admitted that to make one law as regards the water-rate and another law as regards the collection of the other rates would be most unsatisfactory. The section only affected the owners of *bustee* property, and it seemed highly desirable that the landlord, when levying the rents for the huts which were constructed, not by him, but by his tenants, should also include in the rents sufficient to enable him to pay the rates on the huts erected by his permission on his land.

The HON'BLE THE ADVOCATE-GENERAL said it appeared to him that the objections of the hon'ble mover of the amendment were really unanswerable. He had put it on the ground of principle, that the person to whom the hut belonged should be the person chargeable with the tax. The hon'ble member in charge of the Bill said that such a procedure would produce confusion. The ADVOCATE-GENERAL did not think the Council should legislate simply for facilitating the collection of the taxes, but they were also to see that the party from whom the tax came was the party from whom it should come.

The HON'BLE BABOO KRISTODAS PAL said that in reply to what had fallen from the hon'ble mover, he would point out that the present practice was what he had recommended in moving the omission of the section, and it had been in operation since the Act of 1863 had come into force, that was to say, for the last twelve years; and if there had been any confusion, surely the Justices would have come up to this Council for an amendment of the law on this point when so many amending Acts had been passed. Then the hon'ble member said, that except in *bustees* the owner of the land was almost invariably the owner of the house which stood on it, and that it would be necessary to make out separate bills if the section as proposed to be amended by him were not adopted. Now, the Bill declared that the house-rate should be payable by the owners of houses and lands, and BABOO KRISTODAS PAL did not think that any alteration would be needed if the present Section 66 which had been passed came into force. The provision in the Act of 1870, as pointed out by the hon'ble mover, only applied to the water-rate, and when that law was passed the water-rate was payable by the owner. That principle had now been modified, and the provisions of Section 7 of Act I of 1870 would not apply to the present case. He would therefore urge that the section before the Council be omitted.

The motion was agreed to.

The revised Section 69, which enabled the owner of land in such cases to recover the house-rate from the owner of the house, was also omitted on the motion of the HON'BLE BABOO KRISTODAS PAL.

Section 70 provided for the remission of a portion of the house-rate when a house was vacant.

The Hon'ble Baboo Kristodas Pal said this section was the same as Section 68 of the old chapter, in regard to which he proposed the addition of the following words to the end of the first paragraph:—

"It shall be lawful for the Chairman to exempt any unoccupied land from assessment for the period of non-occupation for special reasons shown to his satisfaction, subject to the approval of a Committee of Justices."

Under the law, unoccupied houses and lands were chargeable with half the house-rate. It had, however, been the practice of the Justices for the last twelve years, and until a very recent date, not to levy any rate on account of unoccupied land during the period of its non-occupation. It was true that the law did allow the Justices to charge half rate, but they did not think it fair, and so they did not until recently levy it. Such being the case he was of opinion that this practice should be sanctioned by law. He need hardly point out that there were *bustee* lands in the northern portion of the town, the greater portion of which was unoccupied. If the rates were levied on the unoccupied portions of these lands, then the rates and taxes would almost swallow up the proceeds from the occupied portions thereof; and remembering that these *bustees* were in many cases the only means of livelihood of the owners, it would be hard if the law declared the unoccupied land to be chargeable with the half rate. He would propose that a discretion be given to the Chairman of the Justices to exempt any such land where he was satisfied that the imposition of the rate would be a hardship to the owner. He was confident that the discretion so given would be wisely exercised.

The Hon'ble Mr. Hogg said he was entirely opposed to the amendment. He thought they should affirm the principle either that unoccupied land should or should not be assessed. He could not understand on what ground the Chairman should be vested with discretion in the matter. Surely every owner of unoccupied land should be put on the same footing as regards the payment of municipal taxes, and no distinction should be made as to individual cases.

The Hon'ble Baboo Doorga Churn Law said that these lands remained unoccupied from no fault of the proprietors, because no benefit could be obtained from their remaining unoccupied. Many of these *bustee* lands had remained unoccupied for a very great length of time. The Municipality had in these cases been showing indulgence all along, and it would be a great hardship to the owners to bring these lands under assessment now.

The Hon'ble Mr. Hogg observed that for some time the Justices had been gradually bringing these unoccupied lands under assessment. They exempted nobody now.

His Honor the President observed that there was great force in what fell from the hon'ble mover of the Bill, that the Council must decide either that unoccupied lands should be made liable to the payment of rates or that they should not. If you allowed a discretion to the office-bearers of the Municipality, it put an unnecessarily invidious duty on them.

The Hon'ble Baboo Kristodas Pal admitted the force of the objection, and would therefore accept the principle of total exemption, as had

been the practice for the last twelve years. He would withdraw his amendment, and move that all unoccupied land be exempted from assessment.

The Hon'ble the Advocate-General did not see on what ground the motion was put. If an owner was excessively poor he ought not to be a proprietor of land. He could not make out why the owner of unoccupied land should not be taxed as well as the owner of an unoccupied house. There was no difference between a house and land, and he could find no principle on which the exemption could be claimed.

The Hon'ble Baboo Kristodas Pal said the reason for the proposed exemption was this, that *bustee* lands in many parts of the town were not wholly occupied. Large portions of these lands lay unoccupied from year's end to year's end. It was true that the demand for land was increasing, but for that class of land it could not be said to be increasing to any large extent. In fact, poor people now found it much cheaper to live in the suburbs than in the town. And as the land lay unoccupied from no fault of the owner, and as its assessment under the half-rate clause would press very severely upon the poor proprietor, it was the exceptional circumstances of this property that called for exemption. Natives, it was well known, did not like to part with land, particularly ancestral land, however unremunerative it might be, and however poor their circumstances, and it would be extremely hard if they were forced to sell it.

After some further conversation, the Hon'ble Baboo Kristodas Pal's motion was negatived, and the section as it stood was agreed to.

The revised Sections 71 to 76 were agreed to.

The revised Section 77 provided as follows:—

"If any house is occupied by more than one person holding in severalty, or is of less assessed annual value than two hundred rupees, the Justices may impose the water, police, and lighting-rates upon the owner of such house, or upon the owner of the land on which such house is situated."

The Hon'ble Baboo Kristodas Pal said he had given notice of an amendment in the corresponding section of the Bill. The Council had accepted the principle that each class of rate-payer should pay his own dues to the Municipality, that was to say, that the occupier should pay the occupier's rate and the owner the owner's rate. Such being the case, he did not see with what consistency this section could be adopted, because it enabled the Justices to recover from the owner the police, water, and lighting-rates of a house of less annual value than Rs. 200. There was, it was true, a similar section in the present law, but it was justified on the ground that the rates were now payable in arrear. And as it was believed that the Municipality might suffer considerable loss in recovering small sums from small tenants, the law required the owner to recover these small sums from the occupier. The law having now been amended, and the occupier's rate being now made payable in advance, the liability to loss would be minimised, and he therefore thought it would be consistent to amend this section in conformity with the principle already accepted by the Council. With this object he would move the omission of the words "or is of less assessed annual value than two hundred rupees" and "or upon the owner of the land on which such house is situated."

The Hon'ble Mr. Hogg said the object of the section in the existing law was to exempt the poorer classes from being unnecessarily harassed. It was thought desirable that the indigent classes who were unable to read or write should pay their rent and taxes to one person, viz., the landlord, and should not be called upon to pay the lighting, water, and police-rates to the Justices.

After some further conversation, the Council divided:—

Ayes—4.	*Noes*—5.
The Hon'ble Baboo Kristodas Pal.	The Hon'ble Baboo Juggadanund Mookerjee.
" " " Doorga Churn Law.	" " Mr. Reynolds.
" " Mr Dampier	" " " Hogg
" " the Advocate-General	" " " Schalch.
	" " the President.

So the motion was negatived, and the section as it stood was agreed to.

The revised Sections 78 to 80 were agreed to.

On the motion of the Hon'ble the Advocate-General verbal amendments were made in Section 186 regarding the payment of compensation for the removal of projections from houses when lawfully made.

In Section 208, regarding the inspection of drains, privies, and cess-pools, an amendment was made, on the motion of the Hon'ble Mr. Hogg, providing that in the case of inspection in zenanas "notice in writing of not less than four hours" be given, instead of requiring that such inspection should be made "by the agency of women."

Sections 211 to 222 were agreed to.

Section 223 provided as follows:—

"If the Justices think that any privy or additional privy should be provided for any house or land, the owner of such house or land shall, within fourteen days after notice in that behalf by the Justices, cause such privy, together with the necessary pipes, drains, and water-supply, to be constructed in accordance with the requisition of such notice, and if such privy be not so constructed to the satisfaction of the Justices within such period, the Justices may cause such privy, together with the necessary pipes, drains, and water-supply, to be so constructed, and the expenses thereby incurred shall be paid by the owner."

The Hon'ble Baboo Kristodas Pal moved the omission in line five of the words "or land" and the insertion of the words "of such house" after "owner" at the end of the section. This section, he said, had been copied from the Bombay Municipal Act, but the circumstances of Calcutta were different. If the owner was made liable to provide a separate privy for each occupier on his land, he would be required to do what, under the present Act, he was not required to do, and what he in justice ought not to be made to do. The practice in this town was that the occupier rented the land of the owner and built his own hut and privy on it. By the proposed section the liability to build privies was laid upon the owner, which Baboo Kristodas Pal did not think was fair or just.

The Hon'ble Mr. Hogg said the question resolved itself into this, whether the owners of *bustee* property, who were in the habit of letting out their land to the poorest classes of the inhabitants of Calcutta, should be required to see that such arrangements were made in their *bustees* as to ensure reasonable

sanitary precautions. It was obvious that wherever privies had to be constructed in connection with the drainage scheme, it would entail considerable expenditure, for pipes had to be laid down in connection with the public sewers. It would not be fair to impose the cost of such improvements of a permanent character on tenants who were simply tenants-at-will liable to removal on a month's notice, or no notice at all. Therefore the section provided that the owners of *bustee* property should be required to construct at their own cost such permanent sanitary arrangements within their own land as should prevent the place from becoming a nuisance. To impose this duty on tenants-at-will, who could not remove the latrines when they relinquished the land, would seem obviously unjust, and would moreover be impossible, as they were too poor to carry out improvements of such a character.

The HON'BLE THE ADVOCATE-GENERAL said the section appeared to him to be very wide. Suppose, in the opinion of the Justices, the owner of each hut required a separate privy, the landlord might be called upon to construct as many privies as there were huts on his property.

The HON'BLE BABOO KRISTODAS PAL observed that under the existing law no hut could be erected in any *bustee* without the sanction of the Justices. The occupier was required to send in an application with a plan to the Justices, and the Justices were bound to see that proper sanitary arrangements were provided.

The HON'BLE MR. HOGG said he was unable to see how the section could be otherwise than broadly drawn. *Bustee* land was a most fruitful source of nuisance in Calcutta, and the chief cause of such nuisance was the total absence of all sanitary arrangements. It was therefore deemed advisable to give power to the Justices to insist on sanitary arrangements being provided by the owners of the land, who were generally wealthy persons. To impose that duty upon tenants-at-will, living from hand to mouth, seemed most inequitable.

HIS HONOR THE PRESIDENT remarked that nothing could exceed the insanitary condition of these particular places to which the hon'ble mover alluded. He had himself seen some of them, and it was almost incredible that such places should exist in a city like Calcutta. He had never seen anything like it in any other city in India.

The HON'BLE MR. DAMPIER said that the section as drawn included houses tenanted by wealthy occupants as well as huts tenanted by the poor—lessees as well as tenants-at-will. He admitted that there was a large class of huts, those in *bustees*, of which the tenants could not possibly find the necessary capital to provide proper sanitary arrangements, and upon whom it would not be fair to put the whole expense of constructing these permanent improvements. Would not the hon'ble mover be prepared to adopt some such arrangement as was provided in regard to the laying on of water-pipes in houses, that the capital should be found by the owner, and that he should be able to recover interest on the outlay during existing leases?

The HON'BLE MR. HOGG said he thought that proprietors should be held responsible for constructing such sanitary arrangements in their houses, whether

large or small, as were reasonable. Therefore it would not be fair to call upon the occupiers of houses to construct permanent improvements of that character. As the law stood, most of the proprietors of large houses had received notices, and did construct the necessary works, without calling upon their tenants to pay any portion of the cost, although it was not quite clear whether the Municipality could compel them to construct those works.

The HON'BLE THE ADVOCATE-GENERAL observed that by the interpretation clause the word "house" included a hut, and thence arose the main difficulty. He thought the subject should be divided into two parts, and separate provisions made in regard to houses and huts.

The HON'BLE BABOO KRISTODAS PAL's amendment was negatived, and the section as it stood was agreed to.

Sections 224 to 233 were agreed to.

In Section 234, on the motion of the HON'BLE BABOO KRISTODAS PAL, "one month" was substituted for "eight days" as the period allowed for compliance with an order of the Justices to cleanse or fill up unwholesome tanks or marshy grounds, or drain off stagnant water

Sections 235 to 248 were agreed to.

In section 249, relating to the removal of huts built without notice, amendments were made, on the motion of the HON'BLE BABOO KRISTODAS PAL, with a view to exempt the owner of the ground upon which the huts were erected from being called upon to take action under the section.

Section 250 was agreed to.

Section 251 provided as follows:—

"Whenever the Justices in meeting, other than an ordinary meeting, are satisfied, from inspection, or by report of competent persons, that any existing block of huts in the town is, by reason of the manner in which the huts are constructed or crowded together or of the want of drainage and the impracticability of scavengering, attended with risk of disease, or prejudicial to the health of the inhabitants or the neighbourhood, they may cause a notice to be fixed to some conspicuous part of such block of huts, requiring the owners or occupiers thereof, or, at the option of the Justices, the owner of the land on which such huts are built, within a reasonable time, to be fixed by the Justices for that purpose, to cause such huts to be removed, and such roads and drains to be made and the low lands to be filled up, and to execute such other operations as the Justices may deem necessary for the avoidance of such risk

"And in case such owners or occupiers of the land shall refuse or neglect to execute such operations within the time appointed, the Justices may cause such huts to be taken down, or such operations to be performed as the Justices may deem necessary to prevent such risk; and the expenses thereby incurred shall be paid by the owner of the land

"If such huts be pulled down, the Justices shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or if the owner be unknown, or the title disputed, shall be held in deposit by the Justices until the person interested therein shall obtain the order of a competent court for the payment of the same.

"The Court of Small Causes shall be deemed a competent court for that purpose."

The HON'BLE BABOO KRISTODAS PAL moved the following amendments:—

(1) to insert after "neighbourhood" the words "which shall be certified by at least three medical officers;"

(2) to insert "main" before "drains";

(3) to omit from the end of the first paragraph the words "and to execute such other operations as the Justices may deem necessary for the avoidance of such risk."

He said, perhaps it would be convenient to discuss this section with the section of which notice had been given by the hon'ble mover, because this section as well as the proposed new sections were all connected with the question of *bustee* improvement.

[The HON'BLE MR. HOGG thought it would be better if the section before the Council were discussed on its own merits, leaving out of consideration for the present the sections of which he had given notice.]

The HON'BLE BABOO KRISTODAS PAL continued: This section, as at present worded, was very equivocal, because in the first place it was not clear how the circumstance of the liability of a particular locality to risk of disease, or its prejudicial effect upon the health of the inhabitants of the neighbourhood, was to be ascertained. He dared say it was contemplated that the Justices should be first advised by their Health Officer of the dangerous condition of a particular *bustee* before they served the notice mentioned in the section. But there was no provision in the section which required the Justices to take the opinion of that officer. As the works contemplated by the section would be very extensive and expensive, BABOO KRISTODAS PAL would recommend that in no case should any such works be ordered by the Justices without a certificate from three competent medical officers. He thought that in a matter like this, a matter of life and death, the opinion of three medical men ought to be had before any steps were taken under the section.

Then, as the section was worded, the owner of a *bustee* might be required to provide the whole of the drainage works that might be considered necessary. The Council were probably aware that a Committee of Justices had lately been appointed to report on the improvement of *bustees*, and they recommended that the main drains should be constructed by the proprietor of the land, and that the subsidiary house-drains by the owners and occupiers of the huts. But, as this section was framed, all the drainage works might have to be done by the owner at the direction of the Justices. He would therefore qualify that part of the section by the insertion of the word "main" before the word "drain." Then, in the last clause of the first paragraph, there was no definite instruction given as to what was to be done. It was left to the Justices to order any operation to be undertaken, and if the owner made default, the Justices were to carry out the operation, and the expenses were to be recovered from the owner by distress and sale. The term "operation" was very comprehensive, and also very indefinite, and such a wide discretion left to the Justices was liable to be abused, and calculated to operate harshly on owners.

The HON'BLE MR. HOGG said the section before the Council was almost word for word the same as Section 129 of Act VI of 1863, excepting that the sanction of the Government of Bengal had been left out, for the purpose of throwing the whole responsibility of putting the section in force upon the

Justices. Should the Justices be unable or unwilling to put the section into force, then the sections which he was about to propose would enable the Lieutenant-Governor to step in and take such action as he might think necessary to avoid the risk of disease. The hon'ble mover of the amendment knew that an endeavour was made to put the law into operation, and it was found that the provisions of the law were not sufficiently stringent to compel the owner to execute such works as the Health Officer and Engineer considered absolutely necessary for effecting proper sanitary arrangements. Mr. Hogg thought it would not be wise to fetter the discretion of the Justices in any way; and he felt that in the exercise of their discretion they would be rather inclined to take somewhat mild, rather than too stringent, measures.

His Honor the President observed that the condition of these *bustees* was extremely bad. That really was hardly creditable to such a place as Calcutta. It was not worthy of the sanitation that ought to prevail here, and he would beg to explain to their hon'ble native colleagues that the spirit of the age seemed to have resolved that there should be proper sanitation in such great cities. And it was not in the power of even the Justices to fight against the inevitable tendency of the spirit of the age. These *bustees* would not practically be allowed to remain much longer in the condition in which they were now, and sooner or later the Executive Government would be compelled by the mere force of enlightened opinion, not only in this country, but in the whole world, to do something to improve the condition of these *bustees*. He made that remark in the hope that his hon'ble colleagues would give their best attention to the subject, and co-operate so as to enable the Government effectually to remedy the present state of things. It was most wonderful how in this fine city, with such great public works, there should be such discreditable places existing in it.

The Hon'ble Baboo Krisrodas Pal's 1st and 3rd amendments were then agreed to.

The 2nd amendment, for the insertion of the word "main" before the word "drains," was put and negatived.

The Hon'ble Mr. Hogg said he would now beg the attention of the Council to the sections which he had prepared with the object of enabling the Lieutenant-Governor to take such action as he might think necessary on the report of the Sanitary Commissioner of Bengal, in case the Justices found that the provisions of Section 251 were not sufficient to enable them to carry out the improvements they considered necessary, or in case they might not be disposed to put the provisions of the law into force. In the sections he had drafted, he had placed the whole onus in the hands of the Lieutenant-Governor to cause the necessary works to be executed on the written report of the Sanitary Commissioner of Bengal for the purpose of removing risk of disease in any particular locality. As the question was a very important one, and as the Bill would need to be referred back to the Committee for other purposes, he would suggest that the sections now proposed by him be referred to the Committee with a view to their being carefully considered in Committee before being brought up for discussion in Council.

The Hon'ble Mr. Hogg.

The Hon'ble Baboo Kristodas Pal said he did not expect that these sections would be brought forward before the Council, because they had been thoroughly considered in Select Committee, and rejected by all the members of it, with the exception of the hon'ble mover. The Select Committee had arrived at that conclusion upon several cogent reasons, the chief of which Baboo Kristodas Pal would now state to the Council. In the first place the Committee thought that the Council would be dealing unfairly with the Justices to take the power, as it were, from their hands and place it in the hands of the Government, because, as far as they could see from the reports of the Justices, they had not been wanting in their exertions to give effect to the provisions of the law as it now stood. If the law was defective, it was not the fault of the Justices. Since the question was started six months ago, one or two *bustees* had been taken in hand by the Justices with the consent of the proprietors. Apart from that, the sections involved, he was constrained to say, a serious compromise of principle, because it gave the Government power to take land, as it were, without giving any compensation to the owners. A French philosopher once propounded the theory that property was theft. But these sections in effect proposed that the ownership of property was a crime which should be visited with confiscation

They would empower the Government to deprive the owner of his estate for a time in order to carry out improvements which he might not have the means to carry out; and if the expenses of the improvement were not recovered from the proceeds of the estate within five years, the owner might be allowed a stipend from the income of the estate—for life it might be, for no specific time was mentioned—until the whole cost of the improvement was paid.

The Council having accepted Section 251, which gave power to the Justices to carry out the necessary improvements in *bustees* with a view to avoid risk of disease, he did not see why it was called upon to make further provision on the same subject. The section which the Council had just passed was broad and comprehensive enough. If the owner did not carry out the works enjoined by the Justices, they were empowered to do so, and to recover the cost from the owner. Thus a very wide discretion was vested in the Justices for the reclamation of *bustees*. And here he begged to state, for the information of the Council, that not only the native members of this Council, but of the Corporation, and the owners of *bustees* as well, were willing to co-operate with the Justices for the proper sanitation of the *bustees*. Since the present agitation had commenced at the instance of the hon'ble mover, who was Chairman of the Justices, the Council was aware that the Justices had come forward zealously and required the owners of certain *bustees* to carry out the necessary improvements. These improvements would cover in some cases from about five to six years' income of the estates concerned. One proprietor, who was a wealthy gentleman and who was in a position to meet heavy expenditure, had consented to the execution of the works by the Justices. Other owners were not so fortunately situated, and it was well worthy of consideration whether, in ordering improvements, due regard should not be had to economy. If some of the proprietors had not as yet responded to the call of the Justices, it was more

from want of means than from a spirit of obstructiveness. At the same time he should mention that, however unsightly and disagreeable these *bustee* localities might be, there was nothing to show that there was a greater rate of mortality in these *bustees* than in other parts of the town. We had had dismal pictures of varying merit from the pen of different writers of the state of these *bustees*, but not one of them had favored the public with any reliable statistics on the subject,—not even the Health Officer of the Justices. This defect was pointed out by the Army Sanitary Commission, who said:—

"For sanitary purposes, information beyond that afforded by the general city death-rate, even if this were trustworty, is absolutely necessary. The death-rates and also the disease rates must be localized. The officer of health has done the best in his power with the present data to localize the deaths (not the death-rates) of 68 groups of population, at one extremity of which stands Jora Bagan Street, to which 318 deaths are ascribed, while other groups give between 40 and 50 deaths. Facts of this class afford little real information, and it is to be hoped that in future reports the officer of health will be able to give not only the total death ratios to population of streets and localities, but also the ratio of deaths from endemic diseases From a comparison of such data the localities where expenditure for sanitary purposes is most required could be at once ascertained."

Baboo Kristodas Pal was constrained to say that what the Sanitary Commission had remarked was absolutely true. There was nothing to show what had been the rate of mortality in these *bustees*. There were no statistics whatever: consequently all that had been written and talked about of the unhealthiness of the *bustees* was mere speculation. There had been no sanitary inquiry, and that although the Justices had for twelve years had a responsible Health Officer. Judging from the general rate of mortality, in this town it might be said that it was less unhealthy than even English towns. Thus, in the United Kingdom, the death-rate was about 22½ per 1,000, in London 24, in Manchester 30, in Liverpool 38, and in Sunderland 37. He was lately reading the debates in the House of Commons upon Mr. Cross's Bill for the regulation of artizans' dwellings, and he found that the proposed legislation in England proceeded on a complete scientific inquiry. The fullest inquiry had been made about the mortality in the neighbourhood of poor men's dwellings, and how far it was traceable to the causes attributed, and then a remedy was applied. But here no such inquiry had been made.

Baboo Kristodas Pal would like to know what was the proportion of mortality in the *bustees* to the total death-rate of Calcutta. The sections proposed by the hon'ble mover left it absolutely to the discretion of the Government to call upon the Sanitary Commissioner to order particular works of improvement to be effected by the owner of a *bustee*, which if not done, the Government was to take the estate out of the owner's hands and place it under the management of the Justices, and then carry out the improvement. Now, what was the course to be followed in England in a similar case? He found that Mr. Cross, in introducing the Bill, made these remarks, and he believed the principle of the Bill had been substantially adopted since:—

"We think we cannot do better than provide that those who are to carry out the Act should be, in the city of London, the Corporation; in the rest of the Metropolis, the Metropolitan Board of Works; and in other large towns, the Town Councils, which are practically

the sanitary authority. Who, then, shall put the Act in motion? We proceed entirely on sanitary grounds. We don't wish them to make great street improvements for their own glorification. It is only sanitary purposes that we have in view—therefore we think the Act should be put in motion by the medical officer, who, by his own view or when called upon by a certain number of rate-payers, would be bound to report and certify whether in his opinion the place was an unhealthy district, whether disease prevailed there, and whether that was attributable to the badness of the houses. If he found it so, he would have to state that, in his opinion, it was an unhealthy district, and that an improvement scheme ought to be framed for it. That report would be forwarded to the local authority, being, in London, the Corporation; in the rest of the Metropolis, the Metropolitan Board of Works, and in large towns the Town Council. The local authorities would then take the matter into their consideration, and if satisfied of the truth of the report, and the practicability of applying a remedy, and of the sufficiency of their resources,—because we do not call on the Town Councils to ruin themselves,—they would pass a resolution that the district was an unhealthy area, for which an improvement scheme ought to be provided. The improvement scheme would be accompanied by maps, particulars, and estimates, defining the lands it was proposed to take with compulsory power, and providing for as many of the working classes as might be displaced in that area, either within the limits of the area or the vicinity thereof. In London that is a very essential matter. You cannot pull down a street in St. Giles' and send the people over to Battersea. If you displace the working class, you must lodge them in the vicinity of the locality, otherwise you make them paupers and deprive them of the means of subsistence

"'*I don't suppose that any member will think that Town Councils should have the power of taking other people's property without compensation.*'"

If such a scheme were proposed, it would be both reasonable and equitable. Where the owner was not able to carry out the improvement, he should be offered the option of doing so or receiving compensation for his estate. Then the Justices or the Government might take over the *bustee* after paying compensation, and set an example to other owners; and if it proved remunerative, the example would be contagious. BABOO KRISTODAS PAL held that the sections were opposed to the principle of the legislation adopted in England. The principle of double government, acting through the Justices at one end and the Government at the other, would operate injuriously in practice; and as he believed that the sections already accepted by the Council were quite sufficient to meet the object aimed at, he would suggest that the sections drafted by the hon'ble mover should not be referred back to the Select Committee, as proposed by him.

The HON'BLE MR. HOGG said it was generally admitted that some action was necessary, as the law was not sufficiently strong to enable improvements to be made. The sections as drafted were open to the objection taken by the mover of the amendment, as they enabled the Government to step in and take action in cases where the Justices were not disposed to carry out improvements which should be adopted in particular localities. MR. HOGG was not pressing the Council to adopt the sections he had drafted. He was merely asking that they be referred to the Committee, in order that such objections as the hon'ble member might have might be considered. It was possible that the Committee might adopt alterations and amendments which would remove the objections he had.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he thought some stringent rules should be adopted to put a stop to these abuses in *bustees*. Every

one was aware of the state of the *bustees*, and their state was dangerous to any town, particularly to a town like Calcutta. The question was not whether the proprietor was inclined to make the improvement—he might be inclined to do so in half a century,—but why should his neighbours be put to inconvenience and have all these filthy things existing within a few yards of their residences? He therefore quite agreed that some stringent rules should be passed on the subject. Whether the rules framed were sufficient or reasonable, was a different question. The hon'ble mover proposed that they should be referred for consideration to the Select Committee, and BABOO JUGGADANUND MOOKERJEE was quite prepared to agree that they should be referred to the Select Committee, who would take the matter into consideration and frame rules suited to the circumstances of the town.

The HON'BLE BABOO DOORGA CHURN LAW said he thought Section 251, already passed, was stringent enough, and gave ample powers for the purpose, and he could not see what was the necessity of giving more extended powers to the Government. If the proposed sections were passed, there would be great hardship, and the result would be something which could not be foreseen. The very people in these *bustees* would be the first to cry against it. Most of them would have to leave the town, for they would not be able to pay the rent asked as a proper return for the outlay incurred by the owner, and the owners of these places would also be without adequate remuneration for the expense incurred.

The HON'BLE THE ADVOCATE-GENERAL observed that the wording of the sections proposed by the hon'ble mover went beyond the scope of Section 251. The sections as drawn would apply to an ill-drained house or block of houses, as well as to a *bustee;* and besides that, the sections were open to the broad objection taken, that they did not provide for the payment of compensation. If the Government were of opinion that a particular *bustee* was prejudicial to health, let them sweep it away, paying the owner adequate compensation. He thought there was no use in referring the sections to the Committee unless the hon'ble mover was prepared with a definite scheme.

The HON'BLE BABOO KRISTODAS PAL said, in reply to what fell from the HON'BLE BABOO JUGGADANUND MOOKERJEE, that he would read the following extract from the report of Dr. Lethby to the Commissioners of Sewers for London not many years ago:—

"I have been at much pains during the last three months to ascertain the precise conditions of the dwellings, the habits, and the diseases of the poor In this way 2,208 rooms have been most circumstantially inspected, and the general result is that nearly all of them are filthy or overcrowded, or imperfectly drained, or badly ventilated, or out of repair. In 1,989 of these rooms, all, in fact, that are at present inhabited, there are 5,791 inmates, belonging to 1,576 families; and, to say nothing of the too frequent occurrences of what may be regarded as a necessitous overcrowding, where the husband, the wife, and young family of four or five children are couped into a miserably small and ill-conditioned room, there are numerous instances where adults of both sexes, belonging to different families, are lodged in the same room, regardless of all the common decencies of life, and where from three to five adults, men and women, besides a train or two of children, are accustomed to herd together like brute beasts or savages, and where every human instinct of propriety and

decency is smothered. Like my predecessor, I have seen grown persons of both sexes sleeping in common with their parents, brothers and sisters and cousins and even the casual acquaintance of a day's tramp, occupying the same bed of filthy rags or straw; a woman suffering in travail, in the midst of males and females of different families that tenant the same room; where birth and death go hand in hand; where the child but newly born, the patient cast down with fever, and the corpse waiting for interment, have no separation from each other or from the rest of the inmates. Of the many cases to which I have alluded, there are some which have commanded my attention by reason of their unusual depravity,—cases in which from three to four adults of both sexes, with many children, were lodging in the same room, and often sleeping in the same bed. I have note of three or four localities where forty-eight men, seventy-three women, and fifty-nine children are living in thirty-four rooms. In one room there are two men, three women, and five children, and in another one man, four women, and two children; and when, about a fortnight since, I visited the back room on the ground floor of No. 5, I found it occupied by one man, two women, and two children, and in it was the dead body of a poor girl who had died in childbirth a few days before. The body was stretched out on the bare floor without shroud or coffin. There it lay in the midst of the living, and we may well ask how it can be otherwise than that the human heart should be dead to all the gentler feelings of our nature, when such sights as those are of common occurrence.

"So close and unwholesome is the atmosphere of some of these rooms, that I have endeavoured to ascertain, by chemical means, whether it does not contain some peculiar product of decomposition that gives to it its foul odour and its rare powers of engendering disease. I find it is not only deficient in the due proportion of oxygen, but contains three times the usual amount of carbonic acid, besides a quantity of aqueous vapour charged with alkaline matter that stinks abominably. This is doubtless the product of putrefaction, and of various fœtid and stagnant exhalations that pollute the air of the place. In many of my former reports, and in those of my predecessors, your attention has been drawn to this pestilential source of disease, and to the consequence of heaping human beings into such contracted localities; not merely that it perpetuates fever and the allied disorders, but because there stalks side by side with this pestilence a yet deadlier presence, blighting the moral existence of a rising population, rendering their hearts hopeless, their acts ruffianly and incestuous, and scattering, while society averts her eye, the retributive seeds of increase for crime, turbulence, and pauperism."

BABOO KRISTODAS PAL added that he did not mean to defend the condition of the *bustees* in Calcutta, but that sentimental exaggerations were always beside the truth.

HIS HONOR THE PRESIDENT said that when the hon'ble member read that extract from Dr. Lethby's report in retort to what had fallen from the hon'ble member on the right (Baboo Juggadanund Mookerjee), he did not seem to observe that there was this difference between the two—that we *admitted* the necessity for great improvement in the dwellings of the poor in various parts of England, whilst here it did not seem to be admitted that improvement was necessary and imperatively called for.

After some further conversation the further consideration of the proposed sections, and of the Bill, was postponed.

The Council was adjourned to Saturday, 4th December.

Saturday, the 4th December 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble Baboo Doorga Churn Law,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.

IRRIGATION.

The Hon'ble Mr. Dampier moved that the report of the Select Committee on the Bill to provide for irrigation in the provinces subject to the Lieutenant-Governor of Bengal, be taken into consideration in order to the settlement of its clauses.

The motion was agreed to.

The Hon'ble Mr. Dampier, in moving that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee, said that he might remind the Council that when the Bill was committed to the Select Committee, they consulted the Revenue and Canal Officers of Behar, Midnapore, and Orissa, who had experience in these matters. The Bill was then amended after consideration of their recommendations, and preliminarily reported upon to the Council. It was then published, and the Select Committee again received suggestions from the officers of the districts he had mentioned; and they had also had the benefit of the opinions of some of the Executive Irrigation and Canal Officers of other provinces. The Council were aware that the model they had to go upon was the "Northern India Canal and Drainage Act," the main principles of which were fully discussed in the Governor-General's Council; and it had been the object, where those principles had been once decided, to accept them for the purposes of the Bill, and only to depart from that Act in such points as were necessary to suit the circumstances of Lower Bengal. Many alterations had been made in Committee, and they had been explained somewhat fully in the report of the Select Committee. He would therefore only mention the general scope of the Parts of the Bill.

Part II of the Bill was the most important of all. The first section provided that whenever it appeared expedient to the Lieutenant-Governor that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal, the Lieutenant-Governor might, by notification in the *Calcutta Gazette*, declare that the said

water should be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof; and the following sections provided the procedure for settling the compensation. As the compensation now in question was for damage done by water, which was not the subject of the Land Acquisition Act, the Council were not bound to follow that Act; but the Select Committee had, for uniformity's sake, adopted the compensation procedure of that Act as far as possible.

They had inserted Section 11, which followed the Northern India Canal Act, in laying down certain classes of damage on account of which no compensation might be claimed, and other classes of damage on account of which compensation might be paid.

In Section 12 the Committee had reduced the time (one year) within which claims might be advanced for compensation for damage done to six months, considering that period would be enough. In one material point only had the Select Committee departed from the procedure contained in the Land Acquisition Act. Under that Act, if no claimant appeared before the Collector to settle the compensation, a reference to the Court was imperative. In practice it had been found that when the claim was for a trifling amount of compensation, the claimants did not come in to the Collector to settle the amount, simply because it was not worth their while to come in; how much less worth their while was it for them to come in before the Court to whom a reference then became inevitable in order to settle the amount? To get over this practical inconvenience, the Committee had provided in the present Bill that when no party appeared before the Collector, he should make an explicit award as to the amount of compensation which he considered fair, and that he should give due notice to the parties concerned that he was prepared to pay such amount, and that unless any one interested appeared to dispute the award before the Court within six weeks, such award should become final, and that Government should be secured from any further claims on that account. As the Bill at present stood in regard to Sections 20 to 24, there was another point of difference as compared with the Land Acquisition Act. When these sections were drafted, it was believed that this Council could not confer upon the High Court appellate jurisdiction which it did not already possess; and in this view the sections had been framed so as to stop short of the provisions of the Land Acquisition Act, which allowed an appeal to the High Court in certain cases from the award of the special Court under the Act. Recently, however, the question had received legal ventilation; and the better opinion, which was shared in by the Acting Advocate-General, seemed now to be that the Council should not be doing anything *ultra vires* by following the Land Acquisition Act procedure through, the provisions of which gave an appeal to the High Court. He should therefore propose an amendment which should have that effect.

In Section 23 the Committee had introduced a clause which guarded the Government against having to pay any costs of a reference to the Court, where the reference was made simply and purely on account of the parties concerned not agreeing as to the shares of the compensation to which they were respectively

entitled. That was a matter entirely between the parties; but it had so happened that under the Land Acquisition Act some Courts had made the Collector pay part of the costs of such appeal, which obviously was not equitable: therefore in Section 23 it had been provided that the costs should be paid by the parties concerned, and not by the Collector.

Part III provided for entering upon and doing the necessary works for the maintenance and repairing of canals and flood embankments, for protecting such works from accident, and for repairing the effect of accidents. In this Part full provision was made for compensation for damage done to crops, trees, buildings, or any other property, by the Canal Officers when they entered upon any premises to examine the state of their works. The amount involved would be trifling, and therefore a summary procedure was provided. The Canal Officer would make a tender of the amount which he deemed fair to the parties concerned: if they were not satisfied, the case would be referred to the Collector, who would fix the amount subject to a final appeal to the Commissioner of the division.

The Committee had introduced a new Part into the Bill, enabling the Lieutenant-Governor to provide for the drainage of the irrigated tracts. This was not provided for in the Bill as originally introduced, but it was known that drainage was absolutely necessary for the health of the people, and such works must be carried on *pari passu* with irrigation. The sections provided that compensation should be given for the removal of obstructions which impeded the drainage of the country.

Part V referred to village channels, and had been introduced at the suggestion of the Collector of Midnapore. The subject of these channels was a novel one to village people in these provinces, and it was desirable that the Act should be so framed as to give a complete exposition of the system. The object was to encourage those whose lands might be benefited by irrigation, whether they were landholders or middlemen, or whether they were ryots, clubbing together to construct channels by which water might be led from canals to their own villages. Every assistance was given to them. These channels would confer so much public good that power had been given of taking over land under the Land Acquisition Act for the construction of them, and the assistance of Canal Officers was also given where the projectors of such channels required it. The owners of these channels would use the water for their own fields, and they would take rents from others, not being owners, who should take water through the channels. But although these channels would be private property, it was essential to keep them under the complete control of the Canal Officers. It was therefore provided that the Canal Officers might require the owners to keep their channels in efficient order, and it was also provided that the owners could not transfer their interest in these channels to other persons without the permission of the Canal Officer; and further, that on a second occurrence of failure on the part of the owner, after being called on to fulfil his obligations, the Canal Officer might insist on the owner giving up the channels into hands which would keep them in better order, the owner who was forced to give them up receiving compensation for the same.

The Hon'ble Mr. Dampier.

The obligations of owners of channels were clearly laid down in Section 59. While the crops were on the ground, everything would depend on promptitude of action in respect of these village channels; and therefore Section 63 provided that if the sole owner of a channel died, the Canal Officer might step in and take possession of his channel until the legal representative of the old owner came forward. Until that time the Canal Officer would take charge of the channel and keep it in order for the benefit of those who were dependent on it for their water.

Section 72 provided that land acquired for a village channel could not be used for any other purpose without the consent of the Canal Officer previously obtained. The object was clear enough. A person who proposed to improve or make a village channel might get a Canal Officer to take up land under the Act. Having taken it up against the will of the owner of the land, of course the person who required it should be bound to put it to the use for which it was acquired, and not for other purposes.

In Part VI it was provided that written contracts should be absolutely necessary. There had been much discussion upon the point, and departmental officers apprehended difficulty from this condition. But the Government were willing, in deference to what was understood to be the wish of the people, to accept the inconvenience, and to insist that written contracts should be taken before any person was held answerable for the payment of rates upon the water which was supplied with the consent of the Canal Officer.

The last section of the Bill vested the Lieutenant-Governor with the power of prescribing rules for the working of the Act, and Section 76 laid down certain conditions with which these rules must comply. The section provided under what circumstances only the supply of water might be stopped by the Canal Officers without creating a claim for compensation on the part of those who had contracted for the receipt of a regular supply.

Part VII referred to the water-rates. Sections 79 and 80, the Council would see, were very important. When water was surreptitiously taken or wasted, if the person benefiting by the water so taken could be identified, or the person who actually committed the offence, these persons would be held liable for such charges as the Lieutenant-Governor under the rules might lay down. But if it was impossible to identify those who had benefited or those who actually committed the offence, then the Bill, following the Northern India Canals' Act, enforced a joint responsibility which was absolutely necessary for the proper working of an irrigation scheme. It provided that in such a case all those who ordinarily took their supply of water from the channel out of which the water had been surreptitiously taken or wasted, should be jointly responsible for the charges in respect of such water. In fact the persons who were interested in the channels and the preservation of the water, were hereby saddled with the obligation of being the responsible custodians of the channels. This provision was very fully discussed in the Governor-General's Council before it was adopted in the Northern India Act, and this was a case in which there was no local difference whatever between the Lower Provinces and Northern India. If the principle held good in one place, it held good in another.

Rates and charges under this Part were made recoverable either as rent or demands under Bengal Act VII of 1868.

Part VIII related to jurisdiction. It provided for the prompt and summary decision of certain disputes which, if not so settled, might lead to the loss of the crop on the ground. The procedure was that in such cases the Canal Officer, subject to an appeal to the Collector, should make an order which should have the effect of a decree of a Civil Court until it was upset by an order of the Civil Court.

Part IX related to offences and penalties.

Part X enabled the Lieutenant-Governor from time to time to make rules for the working of the Act; and here it had been necessary to give a very wide discretionary power to the Lieutenant-Governor, because irrigation schemes were a novelty in Bengal, and arrangements must be made tentatively and subject to modifications as experience might teach.

The motion was agreed to.

The consideration of Sections 1 to 5 was postponed.

Section 6 provided for the issue of a notification when the water of any river or stream was to be applied for the purpose of any existing or projected canal.

The Hon'ble Baboo Kristodas Pal moved the insertion of the words "not being private property" after the word "water" in line 6. He said he readily admitted that Government had been actuated by the most benevolent object in proposing this measure, and that the power with which this Bill invested the Government would doubtless be applied to the greatest advantage of the people. But this section, as it was worded, gave a wide latitude to Government, without at the same time giving due compensation to those who might fall within the scope of its action in case their private rights were trenched upon. This section authorised the Government to divert the course of any water channel, private or public; and reading the section with Section 11, it appeared that the exceptions which had been made in Section 11 for compensation would leave out a large class of private rights. Now public waterways were vested in the State as trustee for the general public; but there might be private waterways or channels constructed by private capitalists, or belonging to private individuals as part of private estates, over which the public necessarily had a right of way, but for the use of which private proprietors claimed tolls or other consideration. If such channels were closed or the water of the same were diverted or diminished, as Section 11 was worded, no compensation would be allowed. He might mention one or two cases. There was a channel, called the Kurratiya river, in Rungpore, which the Hon'ble Prosonno Coomar Tagore obtained an Act of the legislature to improve and to levy tolls on. The improvements which he effected did not of course answer, and the channel had not proved to be so useful as it was expected to be; but in this case if the Government wanted to interfere and divert the course of water it would be perfectly competent to do so. Under the law the proprietor would be entitled to no compensation for the obstruction or diversion of navigation. In the same way a private Company might open a canal in the interior, and if Government wished to divert the course of the water, it would be equally competent to do so, and the Company would be entitled to no compensation. If the compensation clause of the

The Hon'ble Mr. Dampier.

section had been framed on an equitable basis, so as to meet such cases, BABOO KRISTODAS PAL would not have the slightest objection to it. But reading these two sections together, he thought it would be very hard upon proprietors if the Government had the absolute right and power to divert the course of any channel or river without at the same time giving due compensation to those who might suffer by its operation. Government would doubtless look to the greatest good of the greatest number: but at the same time, in pursuing that object, Government ought not to lose sight of the interests of those who might suffer by such proceedings. He would be prepared to withdraw the amendment, of which he had given notice, if the compensation clause were made comprehensive enough so as to cover the cases he had mentioned; otherwise he thought the power which this section gave to Government ought not to remain.

The HON'BLE MR. DAMPIER said, it seemed to him it would take but a few words to answer the objections which were raised by the hon'ble member who moved the amendment. The hon'ble member was afraid that channels which had been opened out by private individuals and companies for their benefit might be taken possession of and diverted from their courses. If the hon'ble member would look at Section 6 of the Bill, he would see that it applied to rivers or streams flowing in natural channels, or any lake or other natural collection of still water, and not to artificial courses which might be constructed by companies or private individuals.

Then the hon'ble member had referred to the case of the Kurratiya river. This was certainly a natural channel, and might be diverted under the Act; but there was an Act of the legislature which secured to the gentleman who made those improvements in it the right of imposing and collecting tolls thereon. He had that right, and of course that right would be recognized. Compensation might be awarded in respect of "any other substantial damage not falling within any of the clauses (*a*), (*b*), or (*c*), and caused by the exercise of the powers conferred by this Act." MR. DAMPIER thought that under the wording of this clause the loss of tolls by Baboo Prosonno Coomar Tagore or his representatives would certainly be within the scope of the words "any other substantial damage," which was capable of being estimated at the time of awarding compensation. They would therefore get full compensation.

The HON'BLE BABOO KRISTODAS PAL said that the hon'ble member was right in saying that Section 6 referred only to natural collections of water: still, with due deference to the opinion of the hon'ble member, he would submit that clause (*h*) of Section 11 would not probably apply to the cases he had mentioned, simply because clause (*c*) of Section 11 referred to the stoppage of navigation, or of the means of rafting timber or watering cattle. He would appeal to the hon'ble and learned Advocate-General as to what the effect of clause (*c*) read with clause (*h*) would be in such cases, and whether compensation would be allowed.

HIS HONOR THE PRESIDENT said he wished to point out that the amendment would seem to declare or imply that natural channels might become private property. To accept the hon'ble member's amendment would in effect be to admit the theory that natural channels might be private property. Now, that

was a thing which was never admitted in England. In the case which had been alluded to, the Kurratiya river had not become the private property of Baboo Prosonno Coomar Tagore, but he had the right of levying tolls upon it as a special case for certain improvements made by him; but it was not admitted that the river was his private property. His Honor thought he might safely challenge the hon'ble mover of the amendment to point out any case in which a natural channel became private property.

The Hon'ble Baboo Kristodas Pal said that many rivers were included in zemindari estates, in which the right of navigation undoubtedly belonged to the public, but the property in which belonged to the zemindars of those estates. Some of these rivers formed part and parcel of those estates, and the sunnuds bore sufficient evidence in support of his argument.

His Honor the President said that he did not think that any of the sunnuds or settlements gave the property in flowing rivers to zemindars of estates. They might possess the right of fishing, but he did not think that they ever gave the property in a natural river or stream which was flowing. The property in a stream or river, that was to say dried-up rivers, might be vested in a zemindar, but not the property in flowing rivers. The property in the bed or channel of a dead river might belong to a zemindar, but not in an actually flowing river, or so long as it was a natural channel. He ventured to say that the property in the water did not vest in any private party; at least such was the case in all other parts of India. He spoke with great confidence as regards all other parts of India, and he believed it was the fact in Bengal. The moment the water passed away and left the bed dry, then the claim of the zemindar arose.

The Hon'ble Baboo Kristodas Pal said that the public had a right of way over these rivers, but the late Advocate-General, Mr. Cowie, gave his opinion that the bed of the river was the property of the zemindar. He had also the right of fishery.

His Honor the President observed that, in reference to what the hon'ble member had last mentioned, there was a recent correspondence on the subject which made it clear that no private party should have the right of levying tolls.

The Hon'ble Mr. Dampier remarked that the Kurratiya river was the only one special instance in which this was provided for by a special Act of the legislature.

His Honor the President said he thought the hon'ble mover of the amendment would admit, in reference to what had fallen from the hon'ble mover of the Bill, that in the case he had mentioned there would be substantial damage done under clause (*h*) of Section 11. Baboo Prosonno Coomar Tagore had years ago acquired a lifelong right of levying tolls upon that river, and that right would be substantially damaged by taking up the river for a canal under clause (*c*), and that damage was capable of being estimated and ascertained,—that was to say, compensation for the loss of tolls.

The Hon'ble Mr. Dampier said that the right of levying tolls was specially conferred upon Baboo Prosonno Coomar Tagore by an Act of the legislature in consequence of certain improvements which he made, and he would exclude

that case if the Council wished. It would be observed that to give Baboo Prosonno Coomar Tagore any *locus standi* in collecting tolls, a special Act of the legislature had been passed, from which MR. DAMPIER would argue that wherever a special Act of the legislature did not confer such power none attached to private individuals. It seemed to him that the clauses barring compensation for loss of navigation applied to claims which might be advanced in respect of the loss of the right of way up and down the river, and not to such claims for loss of tolls on the traffic, provided such tolls were legally levied. Of course after what the hon'ble member had stated, it was not easy for MR. DAMPIER to say otherwise.

HIS HONOR THE PRESIDENT said that it was just possible that there was a way by which clause (*h*) could be otherwise worded than it had been. The point really arose from the fact of that gentleman having made a special agreement. He must, HIS HONOR presumed, have made a special agreement with Government, and his claim lay in the working out of that agreement. Of course, clause (*h*) was clearly made to cover any cases which were not provided for by special enactment. He presumed there was an agreement, and would suggest the insertion of the words "excluded by a concession of Government, or by legislative enactment." He was quite willing to provide for compensation being provided for in the case mentioned. In such cases the Council must be careful in putting in any general wording that would include other cases which they did not wish to include. If any private person acquired rights from Government by special enactment, then if those rights were interfered with, he should receive compensation. It had been denied that any rights could accrue on the part of parties to the possession of natural rivers. He thought it had been lately decided by the Government of India that the right of levying tolls on rivers had not been recognized.

THE HON'BLE THE ADVOCATE-GENERAL said that it seemed to him clear that a zemindar who obstructed the passage of a river, would render himself liable to a charge. It was quite clear also that the water of a flowing river did not belong to the zemindar.

THE HON'BLE MR. HOGG said, suppose a zemindar at his own cost many years ago diverted the course of the water in a river to a channel passing through his own property, surely the water so diverted would belong to him.

HIS HONOR THE PRESIDENT remarked that such a case was provided for in Section 11. They did not desire to interfere with rights which now belonged to proprietors, but merely to declare the object of the Government; and as a rule that principle had been steadily adopted. It was an important part of public policy that individual rights should be recognized.

The motion was then put and negatived, and the section as it stood was agreed to.

Sections 7, 8, 9, and 10, were agreed to.

Section 11 having been read—

THE HON'BLE BABOO KRISTODAS PAL moved the omission in clause (*h*) of the words "or drinking-water." The object of the amendment was, that should, by the diversion of a watercourse, or by the operation of any irrigation works,

the collection or quality of drinking-water be interfered with, and the convenience or health of the people thereby suffer, it was but meet and proper that compensation should be allowed to them, so that they might construct good drinking-water tanks in place of the water-supply they had before. He believed the Council would admit the justice of such a provision, and he submitted that that object might be met by the omission of the words "drinking-water." He was aware that the North-Western Provinces Act had that provision, but it did not necessarily follow that because that Act contained such a provision it ought to find a place in the Bengal Act, the justice of it being open to question. He would also propose a further amendment at the end of clause (*h*) of the same section in these terms:—

"Or may be ascertained within five years next after the date of notification under Section 6."

Now Section 11 provided that there should be no compensation allowed for the stoppage of water. But he submitted that in many cases the quality of the crops greatly depended upon the alluvial deposits left after a flood, and any substantial damage sustained by a change in the course of water would come under clause (*h*). But that clause also provided that such damage was capable of being ascertained and estimated at the time of awarding such compensation. Now compensation might be awarded within six months after the issue of a notification. That was far too short a time to ascertain the damage he referred to, and even one or two years would not be quite sufficient; and he thought it would not be unjust either to Government or to claimants if five years were allowed to run within which to estimate the damage which might be caused by the diminution of floods by the opening of new irrigation channels. He thought the damage might be fairly ascertained within that period, and compensation should be allowed accordingly. He would therefore recommend the insertion at the end of Section 11 of the paragraph he had just read. Then, again, His Honor the President had been pleased to remark that some provision should be made to cover such cases as those to which Baboo Kristodas Pal referred when discussing Section 6, and he hoped the hon'ble member in charge of the Bill would make some provision with a view to reconcile clause (*c*) of Section 11 with clause (*h*).

The Hon'ble Mr. Dampier wished to say a word in reference to what had fallen from the hon'ble mover of the amendments. The hon'ble member was mistaken when he said that these words occurred in the Northern India Canal Act. It was a point which had been departed from in the Act. After discussion in Select Committee it was agreed to bring in the words "deterioration of drinking-water" as one of the cases which should not be open to claims for compensation: and the argument was this—that it was almost impossible to determine to whom Government should give compensation, as everybody in a village might come in separately and bring in a separate claim for compensation. That was why the Select Committee put in these words. But they were not in the Northern India Act. Mr. Dampier must say that in his own judgment it was better to keep them in, because there was no use legislating for things which were impracticable. He would therefore oppose the insertion of the amendment.

The Hon'ble Baboo Kristodas Pal.

His Honor the President remarked that the object of the clause was to exclude from compensation claims which were of a very indefinite nature, and which might lead to troublesome litigation, the decision on which it would be almost impossible to foresee. Once you allowed parties to go into Court and litigate about the deterioration of water, it was impossible to say where the matter might end; and if Government became exposed to litigation of that nature, it would seriously interfere with their projects for constructing canals, which would embody undertakings of this benevolent nature. That was the principle upon which these Acts had been framed. He spoke this with confidence, because he was upon the Committee of the Northern India Canal Bill which framed this clause. So it did appear to him that the term "drinking-water" did come within the scope and intentions of that clause.

The Hon'ble the Advocate-General said that the matter required some consideration. He thought there was a great deal in what the hon'ble mover of the amendment said, and that it would be possible to conceive cases in which water had deteriorated in such a way as to be unfit for drinking purposes. He thought there should be some mode of providing water for villages, and although there should be no compensation given, some expedient should be resorted to for supplying what was taken away or had deteriorated. He submitted that this matter should stand over in order to consider what should be done. It appeared to have been left out of the Northern India Act.

His Honor the President said he thought he might explain, in reference to the case supposed by the hon'ble and learned Advocate-General, viz., that the water in certain villages had become brackish, or in a case where the river dried up and became otherwise injurious, that it would be the business of the Canal Department to provide some other water, which he thought they would be delighted to do. All that it would be necessary to do would be to cut a channel from the village, which was the very thing the Canal Department most desired to do for the purpose for which the canal was made. His Honor would have no objection to putting in a proviso, if the Council wished, that in the event of water being deteriorated, the Canal Department should be bound to provide some other channel for a pure water-supply.

The Hon'ble Baboo Kristodas Pal said that if the Bill recognized that distinction, he had no objection to make.

His Honor the President remarked that the point was to retain those words, because nobody proposed to give compensation in money. The majority of the Council seemed to be of opinion that if the supply of water was injured, some other supply should be provided, and upon that they were agreed. He proposed for the consideration of the Council to retain the words "drinking water," and to add to the section a proviso that if the water was injured, Government should be bound to provide some other water.

This was agreed to, and Baboo Kristodas Pal's first amendment was then carried.

The Hon'ble Mr. Dampier said the second amendment of the hon'ble member was the addition in Section 11, clause (*b*), after the word "compensation,"

of the words "or may be ascertained within five years next after the date of the notification under Section 6." As the clause now stood, compensation might be given for substantial damage which was capable of being ascertained and estimated at the time of awarding such compensation. The hon'ble the mover of the amendment said that five years should be allowed to ascertain what loss had been caused, and he had instanced the case of benefit to cultivation from floods. In this the Select Committee had precisely followed what was arrived at after a great deal of discussion and consideration on the very point in the Northern India Canal Act. It was there agreed that no compensation should be given for the loss arising from floods which spread all over the country. The reason was that such loss could not be estimated. Here again it seemed to him that the damage was too indefinite for legislation. There might be drought and no floods in one year and such floods as to be injurious in another, and on the whole the application of a law allowing compensation for loss by floods would be impracticable. He should not like to leave open claims for compensation to be made any time within five years, and the Committee had contented themselves with providing that claims should be made within six months. The Northern India Bill allowed one year, and if the Council desired it, MR. DAMPIER was willing to go back to one year.

The HON'BLE BABOO KRISTODAS PAL said a case occurred lately in which it was proposed to divert the course of a water channel, and a notice was served upon a neighbouring zemindar to know whether he would have any objection to carry out the project; and at last the scheme proposed by the Canal Officer was disallowed by Government. Suppose such a case as that had been carried into effect, and lands not now subject to floods, and which would yield crops, should be almost devastated by floods, and great damage sustained. The question then arose, that it would not be easy to ascertain damages within six months.

HIS HONOR THE PRESIDENT said that the hon'ble the mover of the amendment would see that the case he mentioned was provided for by Section 12 of the Bill, which said that claims must be made within six months from the date of damage occurring. These gentlemen would come and say, "When these works were first made, we did not perceive that there was damage. We now perceive that there is damage, and we make our claim within six months." That was quite fair, hon'ble members would admit.

The HON'BLE THE ADVOCATE-GENERAL submitted that the Bill was for the good of the country at large, and in carrying out its general scheme objections ought not to be allowed to prevail on the possible chance of some unavoidable injustice being done by its otherwise salutary provisions. The principle seemed just to give fair compensation for any damage done.

HIS HONOR THE PRESIDENT expressed his entire concurrence with what had fallen from the learned Advocate-General. He thought Section 12 feasible, and a longer prolongation of the period most unadvisable.

The amendment was then put and negatived.

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The HON'BLE BABOO KRISTODAS PAL moved the introduction of the following words at the end of the section:—

"In addition to the amount of any compensation awarded under this section, the Collector shall, in consideration of the compulsory nature of the Acquisition Act, pay fifteen per centum on the value hereinbefore mentioned."

He observed that he had followed the principle recognized in the Land Acquisition Act on the subject, and he would submit that what was held to be good in the case of the Land Acquisition Act, ought to be equally good in connection with this Bill. He would therefore recommend that fifteen per cent. should be allowed by way of compensation in consideration of the compulsory nature of the acquisition. The Bill provided that where the market value could not be ascertained, twelve times the amount of the diminution of the annual net profits of the property should be reckoned. In addition to this he proposed that fifteen per cent. should be allowed as consideration for compulsory acquisition.

The HON'BLE MR. DAMPIER said he would observe, in the first instance, that the wording of the amendment could not possibly stand, because the compensation they were dealing with was for damage suffered and not for any acquisition of rights. They all knew that the principle referred to by the hon'ble member was adopted in the Land Acquisition Act, by that Act if you took away a man's property for public purposes you allowed him fifteen per cent. in addition to the market value, and MR. DAMPIER might mention a remarkable anomaly which had come out in working that provision of the Land Acquisition Act. When the Collector had agreed for the full price with the owner of the property, and when he was satisfied with the price offered him; and when the Collector made an award according to the amount which he had agreed to accept, even then, under this provision, the Collector must present the proprietor with fifteen per cent. more than the price agreed to as sufficient. That being the principle adopted in the Land Acquisition Act, it might be asked why that principle was not adopted in this Bill. On turning to the Northern India Canal Act of 1873, which was later than the Land Acquisition Act, it would be seen that no such provision was made. He did not know whether there was any argument on the subject, but he supposed that if reasons had been asked for, they would have been given in this way. That when land was taken up for public purposes, it would or might possibly be for the benefit of hundreds of others, and not so directly for that of the owner of the land, who had therefore a grievance in his land being taken in spite of him; but in the case of these irrigation works, the person who suffered the damage by deterioration of his property in one respect was one of those who would directly and immediately benefit by the irrigation of the lands.

The HON'BLE BABOO KRISTODAS PAL said he was sorry he could not subscribe to the arguments of the hon'ble member in charge of the Bill. He had pointed out that the Northern India Canal Act did not contain a provision of this description, though the Land Acquisition Act did, and that therefore the Council was not bound to adopt that principle in this Bill. Now, the general principle recognized by Government was that something more than the market value should be allowed to any person from whom any property was taken

away by a compulsory act of the Government for a public purpose. The hon'ble member had remarked that irrigation channels should benefit whole populations, but railways, BABOO KRISTODAS PAL thought, were equally beneficial. If a railway was opened out masses of people would benefit. If houses and lands were taken up for the purpose of opening out railways and constructing roads under the general Act, fifteen per cent. was allowed over and above the market value. He did not see any reason why the same principle should not be adopted in reference to irrigation works. It was true that the Government of India did not follow that principle in the Northern India Act; but if the principle was just and righteous, he thought it ought to be followed, whether the Government of India had adopted it in one case or not.

The HON'BLE MR. DAMPIER said he might point out that, under the Land Acquisition Act, land might be taken up for fifty different purposes from which the owner of the land acquired would derive no benefit whatever, and not only for railroads and roads. Whereas under this particular Act land was taken up for the express purpose of improving the adjoining property of the persons who were put to some minor loss. He was certain to get some good in return. MR. DAMPIER for one thought that fifteen per cent. was entirely unnecessary even in the case of land acquired for public purposes generally. He thought that holders of landed property should, if required for the public good, give it up on receiving its value in cash, and not a premium besides.

HIS HONOR THE PRESIDENT said that it appeared to him that when fifteen per cent. was fixed as an extra compensation under the Land Acquisition Act, the principle of allowing such additional compensation was carried as far as it properly could be. It was all very well to ascertain the market value of land, but how could they ascertain the market value of damages? Damages were supposed to be in full liquidation of all just demands; then why place a percentage upon them?

The Council then divided:—

Ayes 4	*Noes* 6.
The Hon'ble Nawab Syud Ashgar Ali Diler Jung	The Hon'ble Mr. Reynolds
" " Kristodas Pal.	" " Hogg
" " Doorga Churn Law	" " Dampier
" " Juggadanund Mookerjee	" the Advocate-General
	" Mr. Schalch.
	His Honor the President

So the motion was negatived, and the section as amended was agreed to.

Section 12 was agreed to.

Sections 13 to 19 were severally agreed to.

Section 20 having been read—

The HON'BLE MR. DAMPIER moved the omission in line six of the words "thirty-four inclusive and," and that in line seven the word "inclusive" be inserted after the word "thirty-seven." He said that he had mentioned in his opening speech that when the committee on the Bill sat, it was held that the Council had not the power of conferring appellate jurisdiction on the High Court in any matter in which that court had not already such

jurisdiction. Since then it had so happened that the matter had been a great deal ventilated and discussed in legal circles, and MR. DAMPIER believed that the better opinion was supposed to be that there was no objection to the Council giving the right of appeal to the High Court in those cases in which this Bill followed the procedure under the Land Acquisition Act. If the case was referred by the Collector to the district court under that Act, and the Judge of that court and the assessors of the court were agreed, their decision was final, if the amount awarded was below Rs. 5,000; but if the Judge was of one mind and the assessors differed from him, or if the award for the amount was over Rs. 5,000 under the Land Acquisition Act, an appeal lay to the High Court against the award of the court or of the Judge. Now the better legal opinion appeared to be that the Council could give the High Court similar appellate jurisdiction in compensation cases under this Act, and he had therefore proposed the amendment in Section 20, which would simply have the effect of putting these cases exactly as they stood in the Land Acquisition Act.

The motion was carried, and the section as amended was agreed to.

On the motion of the HON'BLE MR. DAMPIER, Section 21 was omitted.

Sections 22 and 23 were agreed to.

Section 24 having been read—

The HON'BLE MR. DAMPIER moved the omission of the second clause, beginning with "an appeal" and ending with "conclusive," and the substitution for it of the following clause:—"An appeal shall lie from every such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge."

The motion was carried, and the section as amended was agreed to.

Section 25 was agreed to.

The HON'BLE MR. DAMPIER moved the insertion of the words "or of the High Court" after the words "District Judge," in line 16 of Section 26.

The motion was carried, and the section as amended was agreed to.

Sections 27 to 29 were agreed to.

The HON'BLE MR. DAMPIER moved the omission in the last line of Section 30 of the words "with interest thereon" and the substitution of the words "and of any sum which he paid as expenses incurred in purchasing the same, and of any interest which might otherwise have accrued." He would explain why this was rendered necessary. Under the Land Acquisition Act money was invested in Government securities, and when it came to be paid out to the parties entitled, the question had arisen who was to pay for the cost of investing the money, and to bear any loss from a fall in the value of Government securities since the date of investment? Now it was considered that this charge ought to fall upon Government, and he had provided that when the amount awarded was vested in Government securities the person entitled to it should be bound eventually to accept the securities purchased in full satisfaction of his claims.

The motion was carried, and the section as amended was agreed to.

Sections 31 to 75 were agreed to.

Section 76 having been read—

The Hon'ble Baboo Kristodas Pal, in moving the omission of paragraph 4, clause (*a*), which ran as follows—"within periods fixed from time to time by the Canal Officer"—said, that if it was necessary to stop the water-supply at any time, Parts I and II would sufficiently meet the requirements of the case; that was to say, when such works were under repairs or when any additions were being made to them, in which cases the supply would be stopped, and no compensation would be allowed to the owner of the village channel. But clause 4 left it to the absolute discretion of the Canal Officer to stop the water-supply from time to time without any cause whatever. He thought this power would lead to great hardship and loss, and should be withheld. If there were any other causes under which the stoppage of the supply should not be compensated, they should be specified in the law, and not left to the discretion of the Canal Officer.

His Honor the President thought he might admit that the wording of the section was really too wide as regarded the authority of Canal Officers. Perhaps they gave rather an arbitrary authority. But cases did arise sometimes in which it was necessary to temporarily stop the water-supply, because questions sometimes arose in which lessees of water took a greater quantity than they were empowered under the Act, and allowed it to flow into neighbouring lands which they had not taken up. In fact it would amount to a simple waste of the water. Such cases had occurred, and it became necessary to cut off the supply until those questions were settled. Again there were other cases (special cases) arising, in which it might be necessary to cut off the water, and which cases would not come within paragraphs 1, 2, 3; so that it became desirable to confer upon the Canal Officer some additional power. Perhaps the hon'ble member would consent to retain clause 4 with the addition of the words "under rules to be framed by Government" after the words "subject to the sanction of Government."

The Hon'ble Mr. Dampier said that perhaps the hon'ble member would accept the following amendment:—

"Whenever and so long as it may be necessary to stop the supply in order to prevent the wastage or misuse of water."

The Hon'ble Baboo Kristodas Pal having withdrawn his amendment, the amendment moved by the Hon'ble Mr. Dampier was agreed to.

On the motion of the Hon'ble Baboo Kristodas Pal, the word "shall" was substituted for the word "may" in the same section. He submitted that if the supply had not been stopped for the reasons mentioned in the several clauses of the foregoing sections, then the claim to compensation should be held absolute, and the Collector should be required to give reasonable compensation for any loss which the occupier or owner might show.

The section as amended was then agreed to.

Sections 77 and 78 were agreed to.

Section 79 ran as follows:—

"If water supplied through a village channel be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or if no land has derived benefit therefrom, all the persons chargeable in respect of the water supplied through such village channel in respect of the crop then on the ground,

shall be liable to the charges made for such use, as determined by the Lieutenant-Governor under Section 98."

The HON'BLE BABOO KRISTODAS PAL moved the omission of the section. He objected to the section because it was based upon an unsound principle. It sought to throw responsibility upon persons for acts done by others. He hoped that the hon'ble and learned Advocate-General would support him when he said that no man should be held responsible for any act committed by another. But this section provided that though another person might steal or waste water, persons living in the neighbourhood should be punished if the real offender could not be discovered. There was no distinction made between the innocent and the guilty. He was of opinion that the section should be thrown out.

The HON'BLE MR. DAMPIER said that the two sections ought to go together. They involved a matter of principle. They were very fully discussed in the Council of the Governor-General, and the conclusion arrived at was that it was absolutely necessary to enforce the joint responsibility in cases in which the person benefiting or the actual wrong doer could not be identified. Frequent complaints had been made by the Irrigation Department of the wastage of water; and a general benefit was conferred on the holders of land in any neighbourhood by water being brought into canals for their benefit. The owners of village channels undertook the charge of them for their own benefit and the benefit of their tenants and others. They made themselves responsible for keeping in order the outlets through which the water was given out. Now, if water was wasted or taken surreptitiously, every attempt would be made to identify those people who had benefited by the taking of the water, or the people who had actually committed the offence. If they could be identified—if the owners of land exercised a proper control and vigilance and could identify the persons who were to blame—then the penalty would fall upon those persons only. Those who undertook the charge of the village channels were the people to whom the canal department had a right to look to prevent water being taken away, and if they failed in acting up to their responsibility then only would the penalty fall on them. That was the principle upon which the Northern India Act proceeded, and upon that principle the present Bill was framed. That was absolutely necessary, and without such a section water might be taken and enormous expenditure might be thrown upon the general public for the benefit of the few.

The HON'BLE THE ADVOCATE-GENERAL said that he thought the section of the Bill was necessary, and it was on the ground of necessity alone that such a provision ought to be passed. Having regard to the fact that persons who supplied themselves with water watched the operation of each other with great jealousy; having regard to the fact that water-supply was a constant source of litigation—he had very little doubt that in any case where water was

improperly used the offender would soon be detected, and if this class of persons only used due vigilance, it would be easy to find out who had wasted the water. If that was so, he did not think there would be much hardship.

His Honor the President said that there was no doubt that those who were interested in any water-course were perfectly ready to detect any misuse of water, and able to prevent it if they were so minded. He could assure the hon'ble mover of the amendment that in cases where water-courses were misused, those persons who made use of the water became extremely clever in preventing any abuse if they chose to do so. They had done so in many cases, and their vigilance was very creditable to them. They were thoroughly able to prevent anyone from taking more than was his due, and if they only chose to exercise the same vigilance on behalf of the Government, he was sure they would have no difficulty in fairly doing their best to act up to the provisions of this section.

The motion was negatived, and the section was agreed to.

The next amendment, that the following Section 80 be omitted, then fell to the ground in consequence of the preceding amendment having been lost.

Sections 81 to 90 were agreed to.

On the motion of the Hon'ble Mr. Dampier verbal amendments were made in section 91.

Sections 92 to 95 were agreed to.

The Hon'ble Mr. Dampier then moved the insertion of the following section after Section 95, taken from the Northern India Canal Bill:—

"Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest police station, to be dealt with according to law, any person who within his view commits any of the following offences:—

"(1.) Wilfully damages or obstructs any canal or drainage-work.

"(2.) Without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage, or render less useful any canal or drainage-work."

He said that he wished to introduce this section which gave power to arrest without a warrant, and to remove any person trespassing into the canal premises, and to arrest him in certain cases.

The Hon'ble Baboo Kristodas Pal said that it was such an important section that he should suggest that the consideration of it should stand over.

His Honor the President remarked that it merely made the canal people police. It came to the same thing.

The Hon'ble the Advocate-General said that the section was quite clear, and he could quite understand the objection of his hon'ble friend (Baboo Kristodas Pal) which probably arose out of the supposed conduct of the police in this country.

His Honor the President remarked, for the information of his native colleagues in Council, that the canal authorities were far less likely to be oppressive than the ordinary police. The police officers had many objects in dealing with the people, whereas the canal officers were the suppliers of water,

for which they wanted the people to be customers, and had every inducement to be on good terms with them. They were in the position of dealers in water, and they wanted the people to be customers.

After some conversation, the motion was agreed to.

The remaining sections of the Bill, together with the schedule, preamble, and title, were then agreed to.

CALCUTTA MUNICIPALITY.

His Honor the President inquired whether hon'ble members would agree that the substance of the proposals which he had the honor to make at the last meeting of the Council on the constitution of the municipality be drafted into shape and immediately referred to the Select Committee. He believed that was the pleasure of the Council, but he found that no formal motion had been made at the last meeting. And if hon'ble members would agree to a reference being made, then he should put it into form, so that it should be recorded on the proceedings of the Council. [The members unanimously expressed their approval that that should be done.] The President then put the motion that the question be referred to the Select Committee for free discussion and opinion. He said he had not seen anything up to the present which seemed opposed substantially to what he submitted to the Council. He should accordingly draft what he had proposed, and submit it to the Select Committee, and see what they would make of it there, and the Council could then knead it into form.

The motion was agreed to.

The Council was adjourned to Saturday, the 11th instant.

Saturday, the 11th December 1875.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble Stuart Hogg,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor.
The Hon'ble Baboo Doorga Churn Law.
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syed Ashgar Ali, Diler Jung, C.S.I.

IRRIGATION.

The Hon'ble Mr. Reynolds said that, in the absence of the Hon'ble Mr. Dampier, it devolved upon him to move the amendments, which stood in the name of the hon'ble member, in the Bill to provide for Irrigation in the provinces subject to the Lieutenant-Governor of Bengal. He would therefore move that the Bill be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. REYNOLDS said the first amendment he had to propose was in Section 3 (clause VI), line 1 :—

For the words "Court means the principal Civil Court of a district," substitute "Court means, in the Regulation Provinces, a principal Civil Court of original jurisdiction, and in the Non-Regulation Provinces the Court of a Commissioner of a Division."

The amendment was agreed to.

The HON'BLE MR. REYNOLDS said he had now to propose the insertion of a clause after clause (*h*) of Section 11, to the following effect :—

"Notwithstanding anything contained in clause (*c*), compensation may be awarded in respect of the loss of any tolls which were lawfully levied on any river or channel at the time of the issue of the notification mentioned in Section 6."

He said that the Bill, as it now stood, provided that no compensation should be awarded in respect of any damage caused by the stoppage of navigation; and at the last meeting of the Council it was agreed that the wording of the section, as it stood, should be extended so as to include claims for compensation in respect of such cases as the Kurratiya River in the district of Rungpore. It seemed a reasonable clause, and he begged the Council would accept it.

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, the word "such" was omitted, and the words "under this section" after the word "compensation" inserted in Section 11, last clause but one, line 1.

The HON'BLE MR. REYNOLDS then moved the insertion of the following section after Section 11 :—

"11*a*. If any supply of drinking-water is substantially deteriorated or diminished by any works undertaken in accordance with a declaration made by the Lieutenant-Governor under Section 6, the Canal Officer shall be bound to provide within convenient distance an adequate supply of good drinking-water in lieu of that so deteriorated or diminished, and no person shall be entitled to claim any further compensation in respect of the said deterioration or diminution."

He said it would be in the recollection of the Council that on the discussion of the question as to compensation for damage caused by the deterioration of drinking-water, it was determined that the words "drinking-water," as they originally stood, should be omitted. He believed the principle was accepted by hon'ble members that provision should be made for cases in which there was a loss of drinking-water. He therefore proposed to do so by the section he had moved.

The HON'BLE BABOO DOORGA CHURN LAW objected to the words "substantially deteriorated," and suggested the substitution therefor of the words "so as to be unfit for drinking purposes."

The HON'BLE THE ADVOCATE-GENERAL pointed out that the suggested wording would leave the matter more vague than before.

HIS HONOR THE PRESIDENT said he thought the object of the hon'ble member would be better met by the word "substantial" than by the words "unfit for drinking purposes." Water might be rendered substantially damaged without being unfit for drinking purposes.

The amendment proposed by the HON'BLE BABOO DOORGA CHURN LAW was then withdrawn, and the new section agreed to.

The HON'BLE THE ADVOCATE-GENERAL then moved the omission of paragraph 5, in Section 11, which ran thus:—

"And no compensation shall be awarded for any damage sustained by the person interested which, if caused by a private person, would not render such person liable to a suit."

He said that that clause did not occur in the Act passed by the Governor-General's Council, upon which substantially the provisions of the Bill were based. It was originally inserted for the purpose of carrying out the legal principle established by the courts in England under the Land Consolidation Act, where lands were said to be injuriously affected and which gave a person a right of action It was thought better at the time to put that principle in a legal form, but on further reflection he found that inasmuch as the Act specified the cases for which compensation should be allowed and those in which it should not be allowed, it might possibly, instead of elucidating matters, obscure them; and that it might conflict with clause (*d*), which referred to the stoppage or diminution of the supply of water through any natural channel.

The HON'BLE MR. REYNOLDS said he had no desire to oppose the amendment. The words were not in the Northern India Act, and there appeared to be some ground for saying that their operation would conflict with the other sections of the Bill. He was prepared to agree to the amendment.

The motion was agreed to

On the motion of the HON'BLE MR. REYNOLDS, the following omissions were made in Section 25: In line 9 the words "under Section 20," and in line 10 after the word "twenty," the word "one."

In Section 38, in lines 6 and 7, for the words "whose decision shall be final," the following words were substituted:—

"Provided that such appeal be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the decision appealed against.

"If no such appeal be preferred, the decision of the Collector, or, if such appeal be preferred, the decision of the Commissioner, shall be final and conclusive."

Verbal alterations were then made, on the motion of the HON'BLE MR. REYNOLDS, in Sections 48, 49, 50, 53, 54, 59, 63, and 91.

HIS HONOR THE PRESIDENT said that he might say that this Bill was one which was worthy of being passed by the Council. It really embodied all that was valuable and useful in the similar Bill which had been previously passed by the Supreme Council for the Northern Provinces and the Punjab. Besides that, this Bill contained fresh provisions which were found by local experience to be suited to the various provinces of this Government, and it had been carefully considered by the Select Committee and also very carefully discussed by the Council at a sitting held a week ago; and inasmuch as these most useful works were in progress both in Orissa and Bengal, it was most desirable that public officers and the people should have a clear law for their guidance. And if it should please the Council to pass the Bill now, HIS HONOR, speaking for the Local Government, would be glad of it.

On the motion of the HON'BLE MR. REYNOLDS, the Bill was then passed.

CALCUTTA MUNICIPALITY.

THE Hon'ble Mr. Hogg moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. HOGG would ask the Council to go back to Section 72 of the amended Bill. The amendments which he was about to move had been circulated a week back, and what he had to suggest was the omission of the last clauses in Sections 72 and 73, and the insertion of the following new section after Section 73:—

"73*a*. No refund of rates shall be made under the two last preceding sections unless the same is applied for within six months from the date of cessation of occupation of the house or land on account of which the refund is applied for."

The object was simply to prevent complications which might arise under the Bill if the period was omitted.

The motion was agreed to.

The HON'BLE MR. HOGG asked the Council to refer to the next amendment which stood in his name as the new Section 76*a*, which ran as follows:—

"76*a*. Whenever any house or land has been unoccupied during an entire quarter, the owner of the said house or land shall pay to the Justices one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

"The sum payable by the owner under this section shall be payable on the first of April, the first of July, the first of October, and the first of January, for the quarters immediately preceding those dates."

He proposed the section with the object of meeting the decision which had been arrived at by the Council in regard to the payment of the water-rate by owners of houses in the event of houses remaining unoccupied for the whole of one quarter. The Council had already decided that the whole of the water-rate was to be collected, not, as at present, from the owners of property, but from occupiers, leaving the occupier to recover, by means of deduction from the rents, one-fourth of the rate paid by him as occupier. Seeing that the occupier was called upon to pay one-quarter whether the house was occupied or not, it became necessary to provide power for the Justices to enable them to recover one-quarter of the rate from owners of property in the event of the house remaining unoccupied for the whole of one quarter.

The motion was agreed to.

On the motion of the HON'BLE MR. HOGG some verbal amendments were adopted in Section 66, which were rendered necessary by the alterations previously made.

Section 251, relating to improvements in *bustees*, having been read—

The HON'BLE MR HOGG said that when this part was last considered in Council, it was decided that the section which gave power to the Justices to carry out improvements and sanitary arrangements among existing bustees should be somewhat less vague than was provided for by Section 251 of the Bill; and it was further suggested by the Hon'ble the President of the Council that in giving that power to the Justices it would be desirable to enable the

Government, in the event of the Justices refusing or not giving effect to the provisions of the section, to take measures with the view of giving effect to them.

As the matter was fully discussed the last time the Bill was before the Council, he presumed no further remarks on the question were called for from him. He would now ask the Council to refer to Section 251*a*: they would find that it was now proposed to give the Justices power to propose such alterations. In the new section he had now provided, he proposed to omit the words "such other alterations as the Justices might consider necessary," and to confine the powers of the Justices to the construction of roads, drains, and sewers, and the filling up of low lands with a view to the removal of disease. He had also in the section given effect to the amendment carried on the motion of the hon'ble member on his left (Baboo Kristodas Pal) to prevent Justices taking action against huts, unless they were inspected and reported upon by two medical officers. According to the sections as they now stood modified, should the Justices be of opinion that these bustees required improvement, they would have to call upon two medical officers to submit a written report to the Justices in meeting regarding the condition of such places. It would then be the duty of these officers to send in a report in writing on the sanitary condition of the blocks of huts, and further to specify the improvements in the way of the construction of roads, drains, and sewers, and the filling up of low lands which they considered absolutely necessary for the removal of risk of disease arising out of the insanitary state of the block of huts. That was the condition proposed in Section 251. He then followed it by a section which provided that if the local Government were of opinion that the Justices had failed to give effect to the provisions of Section 251, it should be within the power of the Local Government to cause such block or block of huts to be inspected by the Sanitary Commissioner for Bengal, who should make a report in writing to the Local Government on the sanitary condition of the locality; and in the event of his reporting that the sanitary condition of the locality was such as to be attended with risk of disease to the inhabitants or the neighbourhood, should specify the huts which should be removed, the roads, drains, and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of such risk of disease.

The Government could then call upon the Justices to give effect to the provisions contained in the section; and if the Justices again failed to attend to what the Local Government considered absolutely necessary for the improvement of the sanitary arrangements of the huts, then only would it be in the power of the Local Government to take action in the matter. This was provided for in the following clause:—

"If the Justices make default in carrying out the said order of the Local Government, the Local Government may appoint some officer to perform the same, and such officer may exercise all the powers conferred upon the Justices by the last preceding section, and the expenses incurred in that behalf by such officer shall be paid by the owner of the land."

These sections, as far as MR. HOGG was able to understand the wishes of the Council, gave effect to the opinion which was generally expressed as to

narrowing the powers of the Justices and enabling the Local Government to step in, in the event of the Justices failing to carry out their duty, and then only after the Government had requested the Justices to take action in the matter. He trusted, therefore, that the sections would meet with the approval of the Council. With these remarks he begged to move that Sections 251 and 251*a* be inserted in the Bill, in lieu of the present Section 251.

THE HON'BLE THE ADVOCATE-GENERAL said his hon'ble friend the mover of the amendment seemed to think that the Government should not take the initiative. Suppose the Justices did not wish to take measures in this direction. In such a case the Government ought to be entitled to initiate proceedings of a character so necessary to health. There was nothing in the section which compelled them to do so.

The section, the Advocate-General thought, ought to run thus:—"Whenever the Local Government was satisfied that any block of huts was in an unsatisfactory state," and then empower the Government to call upon the Justices to do what was needful in case they failed to take action in the matter.

The HON'BLE MR. HOGG said he would then propose to insert the words "in case the Justices omitted to take action under the last preceding section," then the Local Government should have the power of directing or taking such steps as may be deemed necessary.

The HON'BLE BABOO KRISTODAS PAL said that the sections as amended was certainly less open to objection than those which had been brought forward before. But in endeavouring to make the provision of the law definite, the hon'ble member in charge of the Bill had introduced certain works which, perhaps he knew better than anybody else in the town, could not be carried out in practice. He alluded to the filling up of low lands. This question was over and over discussed by the Justices, and the hon'ble member had himself admitted that the operation would involve an amount of expenditure which many proprietors would not be able to meet; and not only that, but it would not be practicable to get the earth necessary to fill up low lands with which the *bustees* abounded. Then, again, as the section was worded, BABOO KRISTODAS PAL understood it to mean that works which might be specified by the medical officers must be carried out by the Justices, and that they were not to exercise any discretion in the matter. Suppose the medical officers recommended that a road 18 feet broad should be constructed. [The Hon'ble Mr. Hogg:—"all or *any* of the works."] But the Justices would have no discretion to modify any of the recommendations of the medical officers. He was of opinion that the Justices should have a proper discretion in regard to the carrying out of the works, that was to say, to modify, if necessary, the proposals of the medical officers.

Then, again, clause 3 referred to the removal of huts. The occupiers were the persons who ought to remove huts, but the section also gave power to the Justices requiring either the occupier or owner to remove huts. The expenditure which would be thus entailed would fall upon the owners, and it was anything but fair that the proprietor should be made to bear the expenditure which would be incurred in the operation. Perhaps tenants might claim compensation for the removal of huts.

Then he came to the power proposed to be given to the Government to carry out such works, should the Justices omit to take action or neglect to carry out the law. He could well appreciate the anxiety with which Government contemplated the improvement of bustees, particularly when so much had been written and talked about sanitation by sanitary authorities in England. He submitted that it had not been proved that the Justices had been wanting in duty to give effect to the law. It had been admitted by the hon'ble member in charge of the Bill that the law as it now stood needed revision by reason of its indefiniteness. It was now proposed to give definite and sufficient powers to the Justices. If the Justices had deserved the confidence of the Government and the public in carrying out all other improvements in the town, he did not see why they should be restricted in this matter. About six months ago, the Chairman of the Justices energetically moved in carrying out improvement of the bustees; and he believed the Hon'ble member would admit that the Justices heartily seconded him. So far as the works undertaken had gone, the Justices, as far as he was aware, had placed no obstacles in the way, though there had been difference of opinion in matters of detail; but on the general principle there had been perfect unanimity of opinion. Some of the owners had also shown a good spirit, and made advances to carry out improvements suggested by the Justices. Now, seeing that even in England it had been found necessary to guard the power of the sanitary authorities with all manner of restrictions, he did not think it was fair that there should be introduced a sort of double Government in the sanitary administration of Calcutta. If it had been the fact that the Justices did not take due action, or had failed in performing their duties, then it might be proper and reasonable to arm the Government with the powers desired. But, as he had observed, the Justices had not in any way neglected their duty, and it would be showing a want of confidence in them to introduce the new principle.

The Hon'ble the Advocate-General said that the power which it was intended to confer upon Government by the new section was absolutely necessary. It might be perfectly true that the Justices had done all their work in an entirely satisfactory manner, yet it was obviously for the benefit of the town of Calcutta that these nuisances should be removed, and that they should be removed with a strong hand. It therefore appeared to him that all the power which could be brought to bear for getting rid of these nuisances or effecting a reform in these matters should be vested either in the Government or the Justices. The power proposed to be vested in the Justices would not be the least reflection upon the corporation, for if by some chance or by want of funds or other causes they professed themselves unable to carry out these works, he did not see why the Government should not call their attention to them, and, if they failed to do anything, carry out the works. This principle was followed in Section 251*a*. Therefore, so far from this power being in any way in the nature of a supposed animadversion upon the conduct of the Justices, it simply afforded greater protection to the community, which suffered from the existence of these nuisances.

The Hon'ble Mr. Reynolds proposed the omission of the words "other than an ordinary meeting" in the second line of Section 251. He did not see any

reason why a special meeting should be called for the purpose of considering these questions.

The HON'BLE MR. HOGG said that if the hon'ble member would refer to Section 26 of the Bill, he would find that an ordinary meeting consisted of six Justices. He thought it was desirable that when any important work was taken in hand, it should come before a meeting which should be composed of not less than nine Justices. That was the principle adopted in Select Committee, and one which might be very well accepted by the Council.

HIS HONOR THE PRESIDENT had one word to say in regard to what had fallen from the hon'ble and learned Advocate-General as to the last clause of Section 251*a*, which said that the expenses incurred on that behalf by such works should be paid by the owners of land. Well, now there was no limit to expenditure. How was the owner to improve if he refused to pay, or how could the expenses be recoverable? Would it not be desirable to make some condition which would make that clear, in order to allay apprehension on the part of the proprietors of these bustees? Every man liked to know the possible limit of charge. A case might arise in this wise:—Supposing there was a very small block which constituted the sole property of the owner, and when the expenses came to be settled the owner said he was unable to pay. This would be a somewhat improbable case.

THE HON'BLE MR. HOGG explained that there was a sufficient protection given to owners of property. These places were to be inspected by two medical officers, and the Government, too, before any action was taken.

HIS HONOR THE PRESIDENT thought that it was a fair charge upon the owner of property. He believed as a matter of fact that most of these blocks were large ones, and held as valuable property by rich native gentlemen; but there might be possibly some exceptions to them, and he presumed provision might be made to cover all such exceptions. There would then be this difficulty, that it might happen that a very objectionable neighbour might be part owner, and if a limited area was inserted in the Bill, the Justices would not be able to deal with these blocks at all.

THE HON'BLE MR. HOGG said that as in certain cases very heavy expenditure would fall upon owners, he would not object to strike out the word "sewers" in Section 251.

The HON'BLE THE ADVOCATE-GENERAL said he thought that as the hon'ble the mover of the Bill did not object to striking out the word "sewer," the provision would meet most of the cases in which the owner of the property to be improved was a poor man; and he suggested that the amount expended should be recoverable by instalments.

THE HON'BLE MR. BELL said that it seemed to him very injudicious to lay down any particular limit of expenditure, and unless they had some definite information on the question, he thought it would be wrong for the Council to fix any such limit. In the case mentioned by the hon'ble member opposite, it was but fair to suppose that the works would be carried out by the Justices as economically as possible, and without entailing any particular hardship upon private individuals.

There was one remark made by the hon'ble member opposite (Baboo Kristodas Pal) with which, however, he quite concurred, and to which he should like to call the attention of the Council for one moment. The hon'ble member suggested that the Justices should have a discretion in carrying out the works suggested by the medical officers. This seemed a reasonable suggestion. It might be that the Justices might not choose to carry out any works suggested by the medical officers. They might have plans of their own, which, in a sanitary point of view, would prove equally efficacious and more economical at the same time. If the works the Justices did carry out were not sufficient, it would of course be open to the Local Government, under Section 251*a*, to insist upon the work being properly done. He certainly thought it was a question for consideration as to whether it was necessary to restrict the Municipality to carrying out works suggested by the medical officers, or whether it should not have the power of inaugurating works on their own motion. As he read the section, the Justices must confine themselves to carry out works suggested by the medical officer.

THE HON'BLE MR. HOGG desired to point out to the hon'ble member who last spoke that these works were very limited in their nature. The first point was that the medical officers had to declare that there was actual risk of disease owing to the insanitary condition of the block. Having come to that decision, it then became the duty of the medical officers to decide what huts should be removed, or what roads, drains, or sewers should be constructed, or low lands filled up. These were the only works which fell within the scope of the section which it would be within the power of the medical officers to suggest to the Municipality; and certainly if the medical officers were agreed in their advice to the municipality, he thought it should be left to those officers to decide what works were absolutely necessary to remove the risk which they declared actually existed. He was not therefore prepared to accept the proposal that the Justices should be allowed to set aside the opinion of the medical officers as regards the works to be carried out; but he was quite prepared to adopt what the hon'ble and learned Advocate-General suggested, and to give the Justices power to carry out any special works. That seemed to him to meet all the objections raised by his hon'ble friend on the left (Baboo Kristodas Pal).

The HON'BLE MR. BELL said that when he made the suggestion he did not notice the words as they stood. He thought the hon'ble member in charge of the Bill had quite met the objection that had been urged.

The HON'BLE BABOO KRISTODAS PAL said he might mention one case which occurred only last week, and which was in the recollection of the hon'ble member in charge of the Bill. There was a tank in a bye-lane in Dhurrumtollah which the Health Officer considered most injurious to health. Now, the Chairman of the Justices had inspected the tank, and did not consider it to be so injurious. The Health Officer recommended that the tank should be at once filled up. The Chairman was of opinion that similar tanks were in existence in other parts of the town, and if this particular tank was filled up, the other tanks should also be filled up. The Justices concurred with the Chairman, and did not adopt the recommendation of the Health Officer. Now, common sense

might suggest that certain things could not be carried out immediately or absolutely, and yet the medical officers might be of a different opinion; and as the section was worded, the Justices would be bound to carry out all the works proposed by them.

His Honor the President said it appeared to him that the Council had better retain the word "sewers;" but perhaps the retention of it would render the works too expensive in the case of large blocks.

The Hon'ble Mr. Hogg proposed the insertion at the end of the clause of the words "or any portion thereof," and at the end of clause 3 the words "and it shall be within the power of the Justices, in case of poverty, to limit the construction to any portion of such works." He thought this would meet all cases.

The amendments were then put and agreed to, and the amended Sections 251 and 251*a* were carried.

The Hon'ble Mr. Hogg then moved the introduction of the following words after Section 258:—

"Provided that no such license be granted by the Justices for the use of any place situated in the Suburbs as a slaughter-house without the permission in writing of the Municipal Commissioners of the Suburbs, except such place has been used as a slaughter-house before the passing of the Act; and provided further that all fees levied by the Justices for licenses to use places situated in the Suburbs as slaughter-houses be paid by the Justices to the Municipal Commissioners of the Suburbs."

The motion was agreed to.

The Hon'ble Mr. Reynolds moved the insertion of the following words at the end of Section 258:—

"Provided that no license shall be necessary for any slaughter-house which exists or may be erected with the permission of Government upon land being Government property."

The Hon'ble Mr. Hogg said he regretted he was unable to accept the amendment proposed by the Hon'ble Mr. Reynolds, and he would detain hon'ble members of Council for a few minutes to explain the circumstances which led to the question of the inspection of slaughter-houses, and the reasons for which present legislation was sought for. So far back as 1864 a commission was appointed under the orders of Government, consisting of Messrs. Schaloh, Wells, and Horace Cockerell, whose duty was to inspect and report upon the existing slaughter-houses in the suburbs, and to suggest what arrangements would be necessary with a view to provide the town and the suburbs with suitable places for the slaughter of cattle. The committee appointed by Government condemned in very strong terms all the slaughter-houses in the suburbs, declaring that it was absolutely necessary for providing a proper supply of meat that a slaughter-house should be constructed in the immediate vicinity of the main sewer, and also within reasonable distance of a full and pure supply of water. The suburban municipality, in whose jurisdiction the slaughter-house was proposed to be built, were unable to undertake the work. Government then looked to the Justices in Calcutta to carry out the suggested improvements. Their funds were in a more flourishing condition than those of the sister municipality, and the Justices undertook the work on the understanding arrived at between the Suburban Commissioners and the Calcutta

Municipality, and with the assent of Government, that no slaughter-house should be constructed in the suburbs to compete with the slaughter-house the Justices were willing to construct from municipal funds; and it was further arranged that all existing slaughter-houses in the suburbs should be absolutely closed, including the one at Kidderpore. The question then arose whether the Military authorities—that was, the Commissariat—should slaughter cattle at the new slaughter-house the Justices were about to construct. The Commissariat authorities were opposed to the arrangements, but the Committee, however, were very decidedly of opinion that the Kidderpore slaughter-house, along with other nuisances of the same class, should be closed, and that the Commissariat Department should be compelled to have their cattle slaughtered at the new slaughter-house to be constructed by the Justices.

The recommendations of the Committee then went up to Government with a protest from the Commissariat Department. The local Government agreed with the recommendation of the Committee that the Commissariat should slaughter their cattle at the municipal slaughter-house. The question was then referred to the Military authorities with the Government of India, and they also were of a like opinion. Consequently orders were issued for the closing of the institution at Kidderpore, and that all slaughtering, both for the town and suburbs, should be carried on at the Justices' new slaughter-house. Under that clear understanding the Justices spent nearly three lakhs of rupees, not to carry out any improvements which they had themselves initiated, but with a view merely to acting up to the express wishes of the Government of Bengal and the Government of India. Well, when the slaughter-house was constructed, very great difficulty was found in closing the old slaughter-houses in the suburbs, and special legislation was resorted to. The Act passed was not found sufficient, and subsequently they were closed, as being public nuisances, under the Criminal Procedure Code. Owing to the one at Kidderpore in the possession of the Military authorities being generally used by them, the Justices were unable to proceed against them, and it was allowed to continue an admitted nuisance for the last ten years merely because it had the support of the Military authorities; and the Military authorities, notwithstanding the decision arrived at by the Governments of India and Bengal, would not use, and had not used, the slaughter-house made for the use of the public. Now, Mr. Hogg believed, owing to the action of His Excellency the Commander-in-Chief, the slaughter-house at Kidderpore was to be closed, and the Military authorities had suggested that another one should be constructed at Hastings. The matter was placed before the Justices so long back as July 1874, who recapitulated the whole facts of the case, and the report wound up by saying that the Justices had no desire to stand in the way of the wishes of Government.

After the matter had been discussed, the Justices informed the Government that the conditions laid down by Government had been acceded to by them, and that in reference to the proposed building at Hastings, they were prepared to grant a license, provided the Military authorities could satisfy them that its sanitary arrangements were such as would meet the conditions laid down in that letter, and that a private independent supply of water, apart

from the Calcutta supply, was provided for its conservancy arrangements. The only parties that had a right to object to the present arrangements were the Suburban Municipality. They, however, entered into an agreement between themselves and the Calcutta Municipality, and they were now perfectly satisfied, and only stipulated that since the Justices had by legislative enactment deprived them of the right to issue licenses, they should have a reasonable amount paid to them yearly, and that amount was fixed by them at Rs. 1,000. But it was true the Chairman of that Municipality suggested that the amount to be paid should be open to revision after five years. However, MR. HOGG had not thought it desirable or necessary to accede to that proposal, seeing that Rs. 1,000 annually was ample payment, and seeing that the Justices' slaughter-house being situated in the suburbs, they had to pay the usual house and other rates levied in the suburbs to the Commissioners. The Suburban Commissioners being satisfied, the Council was now asked to make exceptional legislation in favour of Government. He did not see why Government should object to let itself be governed by the rules laid down by themselves. No doubt if Government could satisfy the Justices that they desired to construct a slaughter-house upon proper sanitary conditions, supplying it with water, the Justices would be very ready to grant a license for the construction of a building at Kidderpore or elsewhere. But he did not think that the Council should, simply because the property belonged to Government, declare by legislation that Government should be entitled to use a building as a slaughter-house on land belonging to Government within the suburbs, and, as he understood also, within the town of Calcutta. He would further submit that although there had been no legal binding agreement between the Calcutta Justices and the Suburban Commissioners and Government in respect of the number of slaughter-houses, yet there was a distinct understanding arrived at in 1864 on the requisition of Government, and upon that requisition the Calcutta Justices had expended, from monies derived from the rate-payers, nearly three lakhs of rupees; and it seemed to him, therefore, that this Council should hesitate before deciding upon exceptional legislation which would virtually set aside an agreement arrived at in 1865. For these reasons he was unable to accept the amendment.

The HON'BLE MR. REYNOLDS wished to point out that the proposed establishment would not be a new slaughter-house, but only the erection of a new one in place of the old, with certain improvements. He was quite aware of the conditions made by the Justices in 1874, but he was not aware of the acceptance of those conditions by Government.

The HON'BLE MR. HOGG said that they had been officially accepted by Government.

The HON'BLE BABOO KRISTODAS PAL entirely concurred with the hon'ble member in charge of the Bill in the view he had taken as to the question which arose on the amendment. If hon'ble members would read the correspondence which passed between the Justices and the Government, and which resulted in the establishment of the Tengrah slaughter-house, they would find that the work was undertaken by the Justices at the instance of Government,

and for the benefit of the general community in the town and suburbs. It would, he thought, taking the view which his hon'ble friend had taken, be a sort of breach of faith on the part of the Government to deprive the Justices now of the revenues derived from the slaughter-house by authorizing the erection of one on Government land without getting a license from the Justices.

It was urged, in favour of the amendment, that the Kidderpore market would draw its supply of meat from the proposed slaughter-house. Now, if the interests of the Kidderpore market were to be consulted in preference to those of the town, he submitted that Government would be showing an undue preference to the former. Besides, so far as he could understand the hon'ble member in charge of the Bill, the Commissariat slaughter-house at Kidderpore was included in the report of 1864, and if it had not been done away with, it was simply because the Military authorities did not defer to the orders of Government. The Justices were strong enough to suppress private slaughter-houses throughout the suburbs, but were powerless against the Military authorities. Now again it was proposed to make an exceptional case of the Kidderpore market because the Government was interested in it. BABOO KRISTODAS PAL thought that the only party which had a legitimate interest in the matter was the Suburban Municipality; and as a compromise had been effected between the two Municipalities by a division of the license fees, he did not see any reason why the Government should put in a claim for the erection of a slaughter-house on their own account.

The HON'BLE the ADVOCATE-GENERAL said that some years back the subject of slaughter-houses was discussed in this Council, and a law was passed in respect of them. It was declared that existing slaughter-houses in the suburbs were objectionable, that they were nuisances and ought to be removed, and one place constructed and adapted for all parties. He could well remember the time when private persons complained very bitterly of the resolution which had been arrived at. The principle referred to being once established, he could not see how that principle was to be broken in upon simply on the ground that it was convenient to Kidderpore that a slaughter-house should exist there The same remark applied to every other market in Calcutta. It had also been said that it was not proposed to erect a new slaughter-house. He took it that if you left one place and went to another, it was making a new slaughter-house. If any exceptional and special grounds had been set forward before the Council for the proposed amendment, he would have been prepared to deal with the question. Beyond the reduction of some Rs. 300 in the shape of rents, there was no loss. The loss of revenue would not be great, inasmuch as that market would be supplied in the same way as the other markets were. He therefore thought they ought not to make any sort of exception in favour of a particular case, and it would not be right on the part of the Council to carry out by legislation a measure which would tend to the injury of the Justices. On these grounds he objected to the amendment.

THE HON'BLE MR. REYNOLDS said that the sense of the Council being against the amendment, he would withdraw it.

The section as amended was then agreed to.

THE HON'BLE MR. HOGG moved at the end of Section 259 to add the following words :—

"Provided that the Justices shall annually pay rupees one thousand to the Municipal Commissioners of the Suburbs by way of license fee for the slaughter-house established by the Justices at Tengrah."

This would meet the objection which had been placed before the Council by the Suburban Municipality. They had addressed the Council, and their representations were in the hands of hon'ble members. They urged that it would be unfair to deprive them of an income which they previously enjoyed from licensing slaughter-houses in the suburbs. He consulted with the Municipal Commissioners regarding their objections, and the amendment he now proposed to introduce would, he believed, meet all the objections the Suburban Commissioners had.

The motion was agreed to.

Sections 260 to 266 were severally agreed to.

The HON'BLE MR. HOGG moved the omission of the words "under the section" in line 32 of Section 267.

The motion was carried, and the section as amended agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "not being firewood exposed for retail sale" after the words "moved" in clause (j), of Section 268, but the motion was negatived.

The section as it stood was then agreed to.

Sections 269 to 290 were severally agreed to.

On the motion of the HON'BLE BABOO KRISTODAS PAL, the words "within a year" were inserted after the word "conviction" in line 1 of Section 291, and the section as amended was agreed to.

Section 292 was agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the omission of Section 293, but the motion, on being put, was negatived, and the section as it stood was agreed to.

Sections 294 to 320 were agreed to

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "who shall not be a servant of the Justices" after the word "informer" in line 5 of Section 321, but the sense of the Council being against it, the motion was withdrawn.

The section as it stood was agreed to.

Sections 322 to 324 were agreed to.

THE HON'BLE THE ADVOCATE-GENERAL moved the substitution of the words "which is to be determined by" for the words "referred to" in line 1 of Section 325.

The motion was carried, and the section as amended was agreed to.

Sections 326 to 334 were severally agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "duly registered" after the word "post" in paragraph 3, line 3 of Section 335.

The motion was carried, and the section as amended was agreed to.

Sections 336 to 338 were severally agreed to.